रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

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प्राधिकार से प्रकाशित
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सं. 39] नई दिल्ली, सितम्बर 29—अक्तूबर 5, 2024, शनिवार/ आश्विन 7—आश्विन 13, 1946
No. 39] NEW DELHI, SEPTEMBER 29— OCTOBER 5, 2024, SATURDAY/ASVINA 7– ASVINA 13, 1946

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

श्रम और रोजगार मंत्रालय

(हिन्दी अनुभाग)

नई दिल्ली, 20 सितम्बर, 2024

का.आ. 1859.—केंद्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित, 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, श्रम और रोजगार मंत्रालय के प्रशासकीय नियंत्रणाधीन निम्नलिखित कार्यालयों को, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है:

1. **कर्मचारी राज्य बीमा निगम, उप क्षेत्रीय कार्यालय, पीन्या (कर्नाटक)**
2. **कर्मचारी राज्य बीमा निगम अस्पताल, अंकलेश्वर (गुजरात)**
3. **कर्मचारी राज्य बीमा निगम अस्पताल, वापी (गुजरात)**
4. **कर्मचारी राज्य बीमा निगम अस्पताल, उद्योगमंडल (केरल)**
5. **कर्मचारी राज्य बीमा निगम चिकित्सा महाविद्यालय सह अस्पताल, बिहटा (बिहार)**

[फा. सं. ई-11016/1/2022-रा.भा.नी.]

नागेश कुमार सिंह, उपमहानिदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

(Hindi Section)

New Delhi, the 20th September, 2024

S.O. 1859.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 (as amended, 1987) the Central Government hereby notifies the following offices under the administrative control of the Ministry of Labour & Employment, more than 80% Staff whereof have acquired working knowledge of Hindi:-

1. Employees' State Insurance Corporation, Sub-Regional Office, Peenya (Karnataka)

2. Employees' State Insurance Corporation Hospital, Ankleshwar (Gujarat)

3. Employees' State Insurance Corporation Hospital, Vapi (Gujarat)

4. Employees' State Insurance Corporation Hospital, Udyogmandal (Kerala)

5. Employees' State Insurance Corporation Medical College and Hospital, Bihta (Bihar)

[F. No. E-11016/1/2022-RBN]

NAGESH KUMAR SINGH, Dy. Director General

नई दिल्ली, 25 सितम्बर, 2024

का.आ. 1860.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पांड्यन ग्राम बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (66/2017) प्रकाशित करती है।

[फा. सं. एल–12011/18/2016–आई आर (बी–I)]

सलोनी, उप निदेशक

New Delhi, the 25th September, 2024

S.O. 1860.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.66/2017*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai* as shown in the Annexure, in the industrial dispute between the management of Pandhan Gramin Bank and their workmen.

[F. No. L-12011/18/2016-IR(B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, CHENNAI

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 66/2017

Ref. No. L-I2011/18/2016 (IR(B-I) Dated 08.06.2-17

BETWEEN

Pandyan Grama Bank Workers Union
Represented by the general secretary
O/o Pandyan Grama Bank
Soolakkaraimedu-6262203
Tamilnadu

…… Workman

AND

The Chairman
Pandyan Grama Bank
Administrative Office,
2-70-1 Collectorate Complex,
Virudhanagar
Tamilnadu

……. Respondent

AWARD

On 08.06.2017 appropriate authority referred the following dispute to this tribunal for adjudication.

> "*Whether the action of the management of Pandyan Grama Bank, Virudhuagar for recovering the excess money paid to the workman, whose causes are espoused by the Pandyan Grama Bank workers Union as per list enclosed in Annexure- I are legal and justified? if not, to what relief, the workmen/union is entitled to?*

I have heard the learned counsel for the parties and gone through the record.

Case of the workman

Facts as pleaded by the claimant in its statement of claim in brief are as under:-

1. The Petitioner Association is representing the workers of the Respondent Bank. The Respondent Bank is a Regional Rural Bank established under the Regional Rural Banks Act, 1975. Indian Overseas Bank is the sponsor Bank. The salary and allowances are being extended to staff members of Regional Rural Banks on par with their sponsor Bank. Whenever Salary revision is effected in Banking Industry, Government of India will also extend the same to RRBs as per directions of Supreme Court dated 31.01 2001 in civil Appeal No. 2218 of 1999.

2. Government of India vide order No F.No. 8/1/2015-RRB dated 31.7.2015 revised the pay scales of RRB employees and officers consequent upon the revision of the wages in nationalized commercial banks in terms of 10th Bipartite settlement with effect from 1.11.2012. Respondent Bank implementation the wages revision in the month of August 2015.

3. Accordingly Officers (Group A), Office Assistants (Group B) and Office Attendants (Group C) working in Respondent Bank go corresponding wage revision and corresponding arrears from the date 1.11.2012. But the Office Assistants promoted from Office Attendants cadre in the years 2011, 2012 and 2013 were not given corresponding increase in wage revision and arrears due to them. For many of them, the revised salary in the month of Aug, 2015 as per 10th bipartite settlement was lower than the salary they got in the month of July, 2015 as per 9th bipartite settlement.

4. The petitioner Union discussed the issue with the respondent Bank and it was told by the respondent that there was wrong fixation of pay to the Office Assistants at the time of promotions from the Office Attendants in the years 2011, 2012 and 2013 and the excess payment of increments was rectified then.

5. Respondent Bank reduced the increments and denied the arrears thereupon without any prior notice to the concerned Office Assistants.

6. Hence the petitioner herein looking at the plight of these workmen, who are members of the petitioner association, demanded prior notice from the respondent for the reduction of increments, non recovery of excess payment till the issue of proper notice and corresponding arrears due to them from 1.11.2012. Since the respondent refused to concede the demands. The petitioner raised an industrial dispute before the conciliation officer.

6. Before the conciliation officer Respondent Bank accepted its wrong fixation of pay and reduction of increments for the Office Assistants promoted from the Office Attendant cadre in the years 2011 and 2012. It was added by the Respondents that the Office Assistants promoted from Office Attendants in the year 2013 were rightly fixed pay scales and got arrears.

7. Consequently Respondent Bank intimated the reduction of increments and rectification of pay to the concerned Office Assistants vides its letter date 4.3.2016.

8. But Respondent Bank was rigid in its stand to recover the amount of payments have mistakenly been made by the employer. And thereby, the Respondent refused to pay the arrears as per 10th bipartite settlement to the Office Assistants for their corresponding salary they were already paid from 1.11.2012.

Next argument advanced by learned counsel for appellant is that the respondent may be directed to restore pay of the 81 workmen in this dispute as it was prior to re-fixation and also pay the amount recovered from them along with the arrears due to them with interest @ 6% per annum.

In support of his argument learned counsel for appellant place reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **(a) (State of Punjab Vs. Rafiq Masih) (2015) 4 SCC 334. (b)** in the case of **Thomas Daniel Vs. State of Kerala & others in civil No. 7115/2010 dated 2nd May, 2022.(c)** And the Hon'ble Madras High Court in the case of **A. Jayaraman Vs. The Chairman Tamil Nadu Grama Bank, and others** dated 12.10.2022 passed in writ petition No. (MD) No. 21473/2022.

Accordingly it is prayed by learned counsel for appellant present that relief as claimed by claimant may kindly be granted, case may be allowed.

Case of respondent

Learned counsel for the respondent on the basis of the facts as stated in the counter affidavit reproduced herein below:-

1. This respondent Bank is a Regional Rural Bank formed under Regional Rural Bank Act 1976 enacted by the Parliament and sponsored by the Indian Overseas Bank having is Head office at Collectorate Complex, Virudhunagar

2 It is submitted that in exercise of power conferred under second proviso of Section 17(2) of the Regional Rural Bank Act 1976, the Central Government is empowered to revise the salary and allowance of Regional Rural bank employees on par with employees of the Nationalized Banks, consequent upon any revision of pay structure of employees in terms of Bipartite settlement.

3. It is submitted that Xth Bipartite settlement was implemented during the month of August 2015 in the respondent Bank as per the directions of the Government of India on par with Nationalized Bank. Consequent to the implementation of the settlement, the pay revision was made and arrears were paid to the eligible persons and the recovery was also made from whom the fixation was made with higher component of pay during their promotion

4. It is submitted that consequent to the implementation of Xth Bipartite settlement, the pay revision was made and arrear was paid to eligible staff members of the Bank and the recovery was also claimed from whom the fixation was made with higher component of pay during their promotion In respect of the staff members who got promotion from office attendant (MP) (MP) during the year 2011, 2012 and 2013, the fitment was made on the basis of fitment prevailing in the Bank for clerical cadre during the Unfortunately the Bank had received one new fitment formula from Association vide their letter no CIR/HR&IFU76/515/2011 received by Indian Overseas Bank, our Sponsor Bank on 09.07 later on communicated to us. On receipt of that circular, we came in www the fitment was wrongly made to the promoted Office Attendant (MB) OAS) and hence we have done the correct fitment while on Bipartite settlement and eligible arrears were calculated and paid to 41 staff members who were entitled to receive after partially adjusting the of 81 promoted Office Assistant (MP) due from their respective date of and wherever excess payment was arisen, it was claimed from those staff members who were fitted with wrong fitment.

5 It is submitted that Office Attendant (MP) who were promoted to Office Assistant (MP) those who were entitled to receive the arrear after fixing the correct scale of pay were given arrears. For the rest of the promoted Office Attendant (MP), the recovery of excess payment has been claimed whoever fitted with wrong fitment during their promotion.

6 It is submitted that in so far as the contention of the petitioner in paragraph 5, there was a wrong fixation due to promotion which was noticed only after receipt of the said circular from Indian Banks Association. So the increment was reduced for arriving the correct component of pay and thereby the arrear was paid only for the eligible staff member after partially but not fully adjusting the excess payment. The petitioner was well aware of the same.

7 It is submitted that in so far the contention of petitioner in paragraph 6, the wrong fixation of pay was adjusted to arrive at correct fitment thereby the recovery was claimed after adjustment and correction. The revised fitment was also communicated to all individual members vide respondent communication dated 04.03.2016 and working sheet also containing the quantum of amount excessively paid to them was also supplied to them along with the said communication. But the full recovery process was not yet made from the members concerned.

8. In so far as the contention of the petitioner in paragraph 7 and 8 it is submitted all the promoted 81 OAA were fixed with wrong fitment and it was rectified and the correct fitment was made according to the circular received from Indian Banks Association.

In support of his argument placed reliance on the judgment given by the Hon'ble Supreme Court in the case of Sayed Abdul Qadir and others Vs. State of Bihar (2009) 3 Supreme Court cases 475, relevant paragraph quoted herein below:-

57. *This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.*

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar[3], V. Gangaram v. Director, Col. B.J. Akkara (Retd.) v. Govt. of Indias, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh and Bihar SEB v. Bljay Bhadur.

Accordingly learned counsel for respondent submits that claimant is not entitled for any relief and the present claim petition/ID case filed by him, liable to be dismissed.

Finding & conclusion

I have heard learned counsel for the parties and going through the record.

As per undisputed fact of the present case the member of the claimant union/workmen while discharging their duties in the respondent bank, on the basis of the following facts:-

(a) Government of India vide order No F.No 8/1/2015 31.07.2015 revised the pay scales of RRB employees and officers consequent upon the revision of the wages in nationalized banks in terms of 10th Bipartite settlement with effect from 01.11.2012. Respondent Bank implemented the wage revision in the month of August 2015.

(b) Accordingly Officers (Group A), Office Assistants (Group B) and Office Attendants (Group C) working in Respondent Bank got corresponding wage revision and corresponding arrears from the date 01.11.2012.

(c) The 81 workmen in the present dispute were promoted as Office Assistant (Multi-purpose) along with 45 other Office Attendants (Multi-purpose) in 2011. Subsequently, in 2012 and 2013, subsequent batches of Office Attendants were promoted in successive years. At the time of promotion, my pay was fixed under the 9th Bipartite Settlement dated 27.11.2009.

(d) Thereafter, the 10th Bipartite Settlement was entered on 23.02.2015. The benefits of the 10th Bipartite Settlement was to be implemented for all cadres of employees with retrospective effect from 01.11.2012. But the Office Assistants promoted from Office Attendants cadre in the years 2011, 2012 and 2013 were not given corresponding increase in wage revision and arrears due to them. For many of them, the revised salary in the month of August 2015 as per 10th bipartite settlement was lower than the salary they got in the month of July, 2015 as per 9th bipartite settlement.

By the respondent/the members of claimant unions have been granted/paid certain amount (whose name finds place in Annexure No. 1) towards their wages /salary.

Moreover the said payment made by the respondent without, any demand made on behalf of the members of the claimant unions and there is no misrepresentation or any action on the part of the members claimant union on the basis of which the said amount paid to them, which is sought to be recovered by the respondent, as excess amount wrongly paid to them.

Thus question to be considered, whether in view of the above said factual background the said amount can be recovered from the members of the claimant unions (whose name finds place in Annexure No. 1) or not?.

Answer to the said question finds place in the judgment passed by the Hon'ble Apex Court in the case of Thomas Daniel (supra) wherein the Hon'ble Supreme after placing reliance on the judgment passed by the Hon'ble Apex Court in the case of Rafi Mahsi (supra) held as under:-

> *This Court in a catena of Thomas Deuses Of May, 20 decisions has consistently held that if the excess amount was not paid on account of any misrepresentation of fraud of the employee or employer by applying a wrong principle interpretation of for calculating the pay/allowances or on the basis of a particular interpretation rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is provide relief to the employees from the hardship that will be cause if the recovery is ordered. This court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of*

wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances amount paid in excess of any particular case order for recovery of amount paid in excess.

The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the lary beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and keep o circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made." (13) In State of Punjab and Others v. Rafiq Masih (White Washer) and Others4 wherein this court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and 4 (2015) 4 SCC 334 disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:

"8. As between two parties, if a determination is rendered in favour of the party. which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summaries the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group Cand Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover." (14) Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

The Hon'ble Madras High Court in the case A. Jayaraman (supra) after taking into consideration the judgment passed by the Hon'ble Supreme Court in the case Rafiq Masih (supra) held as under , relevant paragraph 12 quoted as under:-

"12. *It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situates wherein recoveries by the employers, would be impressible in law:*

(i) Recovery from employees belongs to Class-III and class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where in employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an interior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employers' s right to recover."

Moreover I have carefully gone through the judgment cited on behalf of the respondents passed by the **Hon'ble Apex Court in the case of Sayed Abdul Qadir,** the respondent cannot derive any benefit from the said judgment as the same is not applicable to the facts of the circumstances of the present case.

Accordingly in view of the said above legal position of law on the point in issue, impugned action on the part of the respondent/Pandyan Grama bank to recover amount already paid to the members of the claimant/union without any fault on their part/misrepresentation is an action which is contrary to law, liable to be set aside.

Next point to be decided/adjudicated in the present case on the basis of the argument raised by learned counsel for appellant that whether an order can passed thereby directing the respondent to inform about the details on the current fixation of pay or the arrears of salary that they are entitled to or not?.

After hearing the learned counsel for the parties and going through the record, admitted position which emerged out that the said relief cannot be granted to the claimant as the same is not within the scope of reference dated 08.06.2017, because Labour Court gets its jurisdiction from the reference and it not like the Civil Court that any one Court, which entertains every suit. The Labour Court cannot go beyond the terms of reference nor it can travel beyond the pleadings and arrogate the power to raise issues which the parties to the reference are precluded to raise.

Further the terms of reference determine the scope of the power and jurisdiction of the Labour Court, from case to case, whether certain points of dispute have been referred to the Industrial Tribunal for adjudication it may, while dealing with the said points, deal with matters incidental thereto. However, such power cannot be exercised by the Court/Tribunal so as to enlarge materially the scope of reference itself for the reason that the Court/Tribunal derives its jurisdiction from the order of reference passed by the appropriate Government **(vide Hocheif Gammon Vs. Industrial Tribunal, Bhubaneshwar, Orissa & O, AIR 1964 SC 1746) Pottery Mazdoor Panchayat Vs The Perfect Pottery Co. Ltd. and Anr, AIR 1970 50 1356 and Mahendra L Jain & Ors. Vs. Indore Development Authority & Ors., AIR 2005 SC 1252)**

ORDER

For the foregoing reasons the present claim petition/ID case filed by claimant is partly allowed and the respondent/Pandyan Grama Bank is restrained from recovering amount/wages already been paid to the members of the claimant union (whose name finds place as per list is enclosed as Annexure No. 1.)

So far as the relief claimed by the claimant that the respondent be directed to inform about the details on the current fixation of pay or the arrears of salary that they are entitled to, cannot be granted as the same is beyond the scope of reference.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2024

का.आ. 1861.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार असम ग्रामीण विकास बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **गुवाहाटी** के पंचाट (12/2019) प्रकाशित करती है।

[फा. सं. एल–12011/34/2019–आई आर (बी–I)]

सलोनी, उप निदेशक

New Delhi, the 25th September, 2024

S.O. 1861.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.12/2019*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Guwahati* as shown in the Annexure, in the industrial dispute between the management of Assam Gramin Vikash Bank and their workmen.

[F. No. L-12011/34/2019- IR(B.I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

REFERENCE CASE NO. 12 of 2019.

PARTIES : The General Secretary, Assam Gramin Vikash Bank Employee Association, Guwahati.

……Workmen/Union.

-vrs-

Assam Gramin Vikash Bank, Guwahati. …….OP/Management.

REPRESENTATIVES:

For the Workmen/Union	:	Mr. R. Nagendranaik, Advocate Mr. H. Nagabhushan Rao, Advocate.
For the Management.	:	Mr. S. Dutta, Advocate.
INDUSTRY	:	Assam Gramin Vikash Bank
STATE	:	Guwahati, Assam.
Date of Award	:	18-09-2024

A W A R D

Mr. Sameran Medhi, General Secretary of Assam Gramin Vikash Bank Employee Association, Guwahati has appeared for the aggrieved workmen. On repeated call at 11.30 a.m. none appeared for the Management of Assam Gramin Vikash Bank, Guwahati. Case is fixed up today for cross examination of workman witness.

Mr. Sameran Medhi, General Secretary of Assam Gramin Vikash Bank Employee Association, Guwahati submitted an application before the Tribunal today in the form of Memo, stating therein that the Management of the Bank had denied benefit of additional increment to the workers of the Bank which was payable to the members of the Union as per settlement dated 29-10-1993, as available to the employees of commercial Banks. It is further stated that during pendency of the proceeding before this Tribunal, the Management of Bank has paid the said benefit to all the eligible members as such the issue involved in this Industrial Dispute has become infructuous and prayed for permitting the Union to withdraw the present reference. Copy of the application has not been served upon the Management of the Bank.

Considered the submission made by Mr. Medhi representative the aggrieved workman. Perused the order of the reference and the schedule.

The Govt. of India through the Ministry of Labour and Employment issued order No. **L-12011/34/2019-IR (B-I) dated 30-10-2019** and in exercise of the powers conferred under clause (d) of sub-section (1) of sub-section (2A) of section 10 of the Industrial Dispute Act,1947 has been pleased to refer the scheduled Industrial Dispute to this CGIT-Cum-Labour Court, Guwahati for adjudication.

SCHEDULE

"Whether the action of the management of Assam Gramin Vikash Bank, Guwahati in denying grant of advance increment (Fixed Personal Pay) and computer increment with consequential benefits to Shri Adul Mifid and 603 other workmen (list attached) is legal and justified? If not, to what relief the workmen are entitled?"

The Case was registered on 15-11-2019, Workmen submitted Written Statement on 12-02-2020. Management filed their Written Statement on 13-10-2020. The Case was thereafter fixed up for evidence on 19-03-2021 onwards. At this stage the Union representative by way of filing his application stated that the claim of the aggrieved workmen has been fulfilled and he wants to withdraw the claim against the Assam Gramin Vikash Bank, Guwahati. In view of such submission, I am hold that formal adjudication of the Case is no more essential. The prayer for withdrawing the Industrial Dispute is allowed. The reference Case is accordingly disposed of. Let a no dispute Award be drawn up in the light of above observation.

Copies of the Award be communicated to the Ministry of Labour and Employment, Government of India, New Delhi for information and notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2024

का.आ. 1862.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, आसनसोल के पंचाट (सन्दर्भ संख्या **27/2018**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **28/09/2024** को प्राप्त हुआ था।

[फा. सं. एल–22012/138/2017-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 26th September, 2024

S.O. 1862.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D. No. 27/2018*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L**. and their workmen, received by the Central Government on 28***/08/2024.***

[F. No. L-22012/138/2017 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 27 OF 2018

PARTIES: Shib Pujan Gowala

Vs.

Management of Bankola Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.
For the Management of ECL: Mr. P. K. Das, Adv.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 29.07.2024

A W A R D

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/138/2017-IR(CM-II)** dated 29.10.2018 has been pleased to refer the following dispute between the employer, that is the Management of Bankola Colliery under Bankola Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Eastern Coal Fields Ltd. (E.C.L) by not providing employment to the dependent of Shri Shibpujan Gwala, Ex-employee of Bankola Colliery, Bankola Area, who was retired on the medical ground, is justified? If not, what relief his dependent is entitled to? "

1. On receiving Order **No. L-22012/138/2017-IR(CM-II)** dated 29.10.2018 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 27 of 2018** was registered on

19.11.2018 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Shib Pujan Gowala filed his written statement on 19.12.2022 through, Mr. Rakesh Kumar, President, Koyala Mazdoor Congress. The case disclosed in the written statement is that Shib Pujan Gowala was a permanent employee, posted as an Underground Loader having UM No. 602598 at Bankola Colliery under

Bankola Area of Eastern Coalfields Limited (hereinafter referred to as ECL). Due to his illness, he was unable to perform his duty and applied for voluntary retirement on medical ground according to the provisions of Clause 9.4.3 of National Coal Wage Agreement – IV (hereinafter referred to as NCWA-IV). He was asked to appear before Medical Board of the employer company constituted for this purpose. On 26.02.1994 after examining Shib Pujan Gowala, the Medical Boad declared him medically unfit for job. Management of ECL in the letter Ref. No. BK:PD:15(11)/58 Yrs/79 dated 11.03.1994 terminated the service of Shib Pujan Gowala on medical ground along with other workmen. On his termination due to physical debility, one dependent member of his family is entitled to get employment. The management directed the workman to submit necessary document for processing the employment of his son. Relevant documents, consisting of Attestation Form, Relationship Certificate, No Objection by other dependent family members, Indemnity Bond were submitted before the management. A screening was conducted at the Colliery level and the dependent son was referred for medical examination by the Initial Medical Examination Board (hereinafter referred to as IME Board) at the Area level, which found him fit for duty.

3. After lapse of time the Headquarters of ECL issued a direction not to process the employment proposal of the dependent on the ground that some complain had been received against the Medical Board, which held the medical examination of the employee and the management decided to cancel the result of the Medical Board, which was however not communicated to Shib Pujan Gowala. Some of the worker namely, Kishori Mohan Chakraborty and others filed a case before the Hon'ble High Court, Calcutta and after hearing the matter, the Hon'ble High Court passed an order, directing the management to provide employment to the dependent of the medically unfit employee and the management provided employment to some of the dependent of the medically unfit persons. On 19.09.1994 the Director (Personnel), Coal India Limited issued a direction to offer employment to dependent of all those who were found medically unfit. It is contended that since Shib Pujan Gowala was declared medically unfit, under the provision of Clause 9.4.3 of NCWA-IV his dependent should be provided with employment. According to the union the ex-workman and his son are not having any income to maintain their livelihood, as such the son of Shib Pujan Gowala should be provided with employment and adequate compensation should be provided to the employee due to inordinate delay in considering prayer and all other consequential benefits.

4. The management of ECL contested the Industrial Dispute by filing their written statement on 19.12.2022. The points on which the claim for employment was denied by the management inter-alia are that the provisions of Clause 9.4.3 of NCWA-IV for employment of the dependent of the disabled employee have been grossly misused by some unscrupulous officials of ECL, unions and employees for the purpose of ensuring employment from generation to generation in the public sector undertaking, which is a violation of the basic fabric of the Article 16 of the Constitution of India. The result of medical examination held at Bankola Area was manipulated with vested interest and the management of ECL was not inclined to accept the findings of the Medical Board. It was also found on enquiry that the concerned workman was not suffering from any incurable disease, resulting in permanent incapacity of the workman. The concerned workman is aware about such manipulation and he did not raise any dispute within a span of two decades after such findings and stoppage of employment to his dependent son. It is contended that the demand raised by the union for employment of the dependent of Shib Pujan Gowala on the ground of partial debility and it was never accepted as full and final. The management of ECL had issued direction for holding fresh medical examination of the person who had appeared before the Medical Board on earlier occasion and Shib Pujan Gowala finally not declared as medically unfit. Consequently, the question of providing employment to his dependent son does not arise. It is urged on behalf of the management that the claim raised by the union is absurd and the dependent of Shib Pujan Gowala is not entitled to get any employment.

5. In order to establish his case in this Industrial Dispute Shib Pujan Gowala submitted his affidavit-in-chief. He examined himself as Workman Witness – 1 and faced cross-examination. In his affidavit-in-chief the main case projected by him is that on 26.02.1994 he was declared medically unfit for duty. Thereafter management terminated his service on medical ground under the provision of Clause 9.4.3 of NCWA-IV by issuing letter bearing Ref. No. BK:PD:15(11)/58 Yrs/79 dated 11.03.1994. On the basis of the direction passed by the management on 11.03.1994, employees declared medically unfit were asked to submit application for employment of their dependent as per Clause 9.4.3 of NCWA-IV. Shib Pujan Gowala submitted an application for employment of Prakash Gwala (Yadav), his son. Documents called for by the management were also submitted. After screening at the colliery level his son was sent for medical examination by the IME Board and he was found fit for duty. In course of his evidence the workman produced the following documents :

(i) Copy of the Identity Card of Shib Pujan Gowala is produced as Exhibit W-1.

(ii) Copy of the Office Order 11.03.1994 by which he was terminated from service for being medically unfit for duty and asked to submit application for employment of his dependent son is produced as Exhibit W-2.

6. In course of cross-examination Shib Pujan Gowala admitted that the competent authority did not accept that the recommendation of the Medical Board. He further stated that the name of his son Prakash Gwala (Yadav) is recorded in his Service Record as a dependent and his said son was thirty years old at the time he appeared before the Medical Board. The witness further deposed that at present his son is forty years old and denied that he is not entitled to the benefit of employment on the ground of his voluntary retirement on medical ground.

7. Management examined Dibyendu Ghosh, Manager (Personnel), Bankola Colliery as Management Witness – 1. He filed his affidavit-in-chief in support of the stand taken by the management. It is admitted that Shib Pujan Gowala was a permanent employee of ECL. He was declared medically unfit for duty by the Medical Board on 13.03.1994 and he was terminated from service on the ground of medical unfitness. Later on, due to detection of some malpractice the findings of the Medical Board was not approved by the higher authority and the workmen were requested to appear for a fresh medical examination which was held on 21.01.1995, but the workman never appeared before the said Medical Board. It is further stated that compassionate appointment under NCWA-IV is provided to the eligible dependent of the workman found permanently incapacitated due to disease or on his death and a certificate of such disablement or debility had to be issued by the coal company. Unscrupulous officials and unions have gravely misused the benevolent clause for employment in public sector, violating the principles of Article 16 of the Constitution of India. The witness stated in his affidavit-in-chief that during enquiry it was found that the concerned workman was not suffering from any incurable disease resulting in permanent incapacity to work and the union and the workman fully aware about such manipulation, did not raise any Industrial Dispute for more than two decades. The management denied employment to the dependent of Shib Pujan Gowala on the ground of his medical debility. The witness produced the following documents in course of evidence :

(i) Copy of the Office Order 11.03.1994 by which Shib Pujan Gowala was terminated from service and his work was stopped from 13.03.1994 has been produced as Exhibit M-1.

(ii) Copy of the order dated 02/03.03.1994 relating to termination of service of Shib Pujan Gowala on medical ground, as Exhibit M-2.

(iii) Copy of the letter dated 29.04.1994 issued by the Director (Personnel) addressed to the General Manager of Bankola Area, as Exhibit M-3.

8. In cross-examination the witness admitted that by order dated 02/03.03.1994 (Exhibit M-2), the competent authority of Bankola Area has approved termination of service of the enlisted persons including Shib Pujan Gowala on medical ground. Management witness admitted that they have no record from which it can be made out that Shib Pujan Gowala had made any representation before the company for employment of his dependent on the ground that he had been declared medically unfit. The witness further stated that the chairman of the Medical Board was competent to declare somebody as medically unfit but he was unable to state that on whose recommendation Shib Pujan Gowala and other persons were declared medically unfit. It transpires from the evidence of MW-1 that the General Manager of Bankola Area had requested to inform the Director (Personnel) if service of the employees, declared unfit by the said Medical Board had been terminated and whether the cases for employment of their dependent have been processed. The witness failed to produce any document or copy of the letter to show that Shib Pujan Gowala was asked to appear before any fresh Medical Board thereafter. It also appears that no letter was issued to Shib Pujan Gowala asking him to join his service on the ground that the decision of Medical Board declaring him unfit was incorrect and improper. The management witness stated that no Initial Medical Examination of any dependent was held for providing employment.

9. The sole question formulated for adjudication is whether it is justified and proper in providing employment to the dependent of Shib Pujan Gowala on his retirement on medical ground. If not, what relief the dependent is entitled to?

10. Mr. Rakesh Kumar, Union representative for the aggrieved workman, in his argument submitted that the Medical Board examined Shib Pujan Gowala on 26.02.1994 and declared him unfit for duty according to the provisions of Clause 9.4.3 (ii) of NCWA-IV. At the relevant time the workman was fifty-six years of age and had four years left in service for his superannuation. By letter dated 11.03.1994 (Exhibit W-2) Shib Pujan Gowala, whose name appeared against serial no. 16 of the Office Order, was declared medically unfit for duty on debility ground and was stopped from duty w.e.f. 13.03.1994. Relying upon Exhibit M-2, a letter dated 02/03.03.1994 issued by the Personnel Manager (Incharge), Bankola Area it is argued that the service of Shib Pujan Gowala was terminated and the same was approved by the competent authority. It is argued that though the management has taken a plea that there was manipulation in the findings of the Medical Board, the same was not accepted by the company, no letter was issued to the terminated workman, informing him about the decision of management, any subsequent medical examination or asking him to resume office by setting aside or recalling the order of termination approved by the competent authority. Mr. Rakesh Kumar argued that some of the employees who were declared medically unfit and

no employment was provided to their dependents had preferred Writ Petition bearing No. 23 of 1996 before the Hon'ble High Court at Calcutta, wherein the Hon'ble High Court observed that :

> *"…… the adverse vigilance report does not stand in the way in giving suitable employment to the petitioners dependent, as the petitioners were declared medically unfit. In the event the petitioner's dependants are found eligible their cases shall be considered for employment in the suitable post. Therefore I direct that the respondents and / or each of them to take steps with regard to employment of the respective petitioners' defendant in terms of 9.4.3 of the said Agreement. ……"*

It is further argued on behalf of the workman that the findings of the Medical Board by which Shib Pujan Gowala was declared medically unfit for duty has not been set aside by subsequent order. Therefore, according to the provisions of Clause 9.4.3 (ii) of NCWA-IV, which was applicable to the workman until coming into force of NCWA-V, signed by the Joint Bipartite Committee for the Coal Industry on 19.01.1996, entitles Prakash Gwala (Yadav), the dependent son to be considered for employment.

11. Mr. P. K. Das, learned advocate for the management of ECL argued that the Medical Board, which was functioning in connivence of the union and workman, declared several workmen medically unfit for duty, despite the fact that they were not suffering for debilitating disease. The Office Order dated 11.03.1994 by which Shib Pujan Gowala was declared medically unfit for duty was stopped from duty w.e.f. 13.03.1994, as they had proceeded on leave and no order of termination was issued to Shib Pujan Gowala. The management by confidential enquiry found that good number of persons were declared medically unfit by the Medical Board on 26.02.1994 and wanted to know if the service of such persons were already terminated and employment of the dependents were processed. The General Manager of Bankola Area was also requested to ensure that no employment of the dependent was processed or forwarded till the same was approved by the Director (Personnel) (Exhibit M-3). In respect of the direction passed by the Hon'ble High Court at Calcutta in the Writ Petition to give suitable employment to the dependent of the employee found medically unfit, it is argued that the present petitioner did not approach the Hon'ble High Court and the management of the company had no responsibility to consider his case for employment of his dependent according to the provisions of NCWA-IV. It is vehemently argued by Mr. P. K. Das that after long lapse of twenty years Shib Pujan Gowala had approached the Industrial Tribunal, raising a dispute, which is not bona fide and his prayer for employment to his dependent is not sustainable.

12. I have considered the argument advanced by both the parties and the evidence on record. The admitted case is that Shib Pujan Gowala was a permanent employee of Bankola Colliery, who applied for voluntary retirement on medical ground. His prayer had been considered and the Disability Medical Board of the company setup for the purpose, held medical examination on 26.02.1994 and found Shib Pujan Gowala medically unfit for duty according to Clause 9.4.3 (ii) of NCWA-IV. The Office Order dated 11.03.1994 (Exhibit W-2) was issued by the Agent of Bankola Colliery on the basis of letter No. BA/PD/A-II(28)/632 dated 02/03.03.1994 of Personnel Manager (Incharge) of Bankola Area. On the basis of such order the duty of concerned workman was stopped from 13.03.1994. It transpires from the pleadings of both the parties and the evidence of the workman as well as management that till date the provisions of Clause 9.4.3 (ii) of NCWA-IV has not been complied by the management of the company and dependent of the concerned employee was not provided with employment.

13. Learned advocate for the management of ECL contended that the Chairman of the Medical Board is competent to certify that the employee is medically unfit on the ground of debility but in the instant case no such certificate has been issued. In my considered view it goes without saying that the management of the company having issued office order dated 11.03.1994 on the basis of approval of the competent authority for termination of service of the enlisted employees is presumed to have taken into the consideration the relevant report of the Medical Board, authorized to certify such medical debility or disablement. The management of the company has produced a copy of letter dated 02.03.1994 issued by Personnel Manager (Incharge) of Bankola Area, informing the Agent of Bankola Colliery regarding termination of service of several employees of the company on medical ground. The said letter dated 02/03.03.1994 (Exhibit M-2) precedes the letter bearing No. ECL/HQ/D(P)/02/1935 dated 29.04.1994 issued by the Director (Personnel) addressed to the General Manager of Bankola Area, wanting to know if the service of the employees declared unfit by the Medical Board have been terminated. It was also directed that that no employment should be processed till the same was approved by the Director (Personnel). At this juncture it may be safely be deduced that the termination process had already been made by issuing the Office Order dated 11.03.1994, which in clear terms referred to letter Ref. No. BA/PD/A-II(28)/632 dated 02/03.03.1994 of Personnel Manager (Incharge) of Bankola Area, disclosing approval of termination of employees. There is no case of the management that any order was issued by the management for setting aside or revoking its office order dated 11.03.1994, based on the Medical Board's findings or asking them to resume their duty from any particular date. The management led no evidence to prove that Shib Pujan Gowala was asked to appear before any Medical Board constituted on 21.01.1995 for re-assessment of his medical condition and extent of his debility. Due to non-fulfilment of such responsibility the management is duty bound under the provisions of Clause 9.4.3 (ii) of NCWA-IV to consider the claim for employment of the dependent son of Shib Pujan Gowala. In the instant case Shib Pujan Gowala has not produced any document to show that any application was made by him before the management to provide employment to his dependent son, Prakash Gwala (Yadav). The stand taken by the management is not justified. Therefore, the

management of ECL is directed to process the prayer for employment of the dependent son of Shib Pujan Gowala within a period of one month from the date of communication of the Award in accordance with the provisions of NCWA-IV, providing full opportunity to the party to place all materials and communicate their decision to Shib Pujan Gowala within a fortnight thereafter. In default the management of the company shall be liable to compensate Shib Pujan Gowala by paying him a sum equivalent to his wages and all consequential benefits which would have fallen due in favour of the employee from 13.03.1994 till the date of his superannuation, had he not been terminated from his service by the office order dated 11.03.1994. The compensation amount shall be paid within a period of one (1) month from the date of default in providing the employment to the dependent. Any delay in paying such compensation will be accompanied by an interest of nine percent (9%) per annum on the sum till repayment. The Industrial Dispute is accordingly allowed in favour of the workman on contest.

Hence,

ORDERED

that the Industrial Dispute is allowed in favour of Shib Pujan Gowala on contest. The management of Bankola Colliery of ECL is directed to process the employment proposal of the dependent son of Shib Pujan Gowala under the provision of Clause 9.4.3 (ii) of NCWA-IV and communicate the decision to Shib Pujan Gowala within a fortnight. In default of providing employment to the dependent son (Prakash Gwala (Yadav)) of the employee the management shall compensate Shib Pujan Gowala by paying him a sum equivalent to his wages and all consequential benefits from 13.03.1994 till the date of his superannuation, as if Shib Pujan Gowala was not terminated from his service on the ground of his debility. The compensation amount shall be paid within a month from the default of providing the employment to the dependent. Any delay in paying such compensation shall accrue an interest of nine percent (9%) per annum on the sum till payment is made. Let an Award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2024

का.आ. 1863.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, आसनसोल के पंचाट (सन्दर्भ संख्या **36/2018**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **28/09/2024** को प्राप्त हुआ था।

[फा. सं. एल–22012/50/2018-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 26th September, 2024

S.O. 1863.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No. 36/2018*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **28*/08/2024***

[F. No. L-22012/50/2018-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 36 OF 2018

PARTIES: Abhijit Bouri

Vs.

Management of B.M.P. Group of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.
For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 21.08.2024

A W A R D

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/50/2018-IR(CM-II)** dated 13.11.2018 has been pleased to refer the following dispute between the employer, that is the Management of B.M.P. Group under Sodepur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

" Whether the action of the Management of Patmohna Colliery under Sodepur Area of M/s. ECL in dismissing Shri Avijit Bouri, U.G.Loader w.e.f. 12/16.12.98 is justified or not? If not, to what relief the workman concerned is entitled to and from which date? "

1. On receiving Order **No. L-22012/50/2018-IR(CM-II)** dated 13.11.2018 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 36 of 2018** was registered 03.12.2018 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. The aggrieved workman filed his written statement on 28.10.2022 and the management of the employer company contested the Industrial Dispute by filing their written statement on 02.01.2023. In gist, the fact of the case of the workman represented by Koyala Mazdoor Congress is that, Abhijit Bouri, an Underground Loader, bearing UM No. 814898 was a permanent employee of the company, posted at Patmohana Colliery under Sodepur Area of Eastern Coalfields Limited (hereinafter referred to as ECL). The workman was absent from duty from 04.02.1998 to 15.10.1998, for a period of eight months and ten days due to illness. The management of the employer company issued a Charge Sheet against the workman for his unauthorized absence to which Abhijit Bouri submitted his reply, requesting the company to permit him to join his duty.

3. Without issuing any Notice of enquiry, the employer company initiated a domestic enquiry against him, of which he had no knowledge. The workman was not provided with any opportunity to represent his case or to take the assistance of any co-worker. The Enquiry Proceeding was concluded ex-parte and the order of dismissal was issued against him bearing Ref. No. BMP/C-6/12-A/1009 dated 12/16.12.1998.

4. The grievance of the workman is that he had to reside at Satgram Bograchetti, which is far away from his place of duty at Patmohna Colliery. No Notice of enquiry was sent to his home address, as a result workman could not attend the enquiry. No 2nd Show Cause Notice was issued to the workman to provide him an opportunity to defend his case. In the Charge Sheet there is no charge of habitual absence but the management had taken into consideration such charge in the course of enquiry without any notice to the workman. The workman submitted mercy petitions for his reinstatement but the management did not consider the same. In the light of Memorandum of Settlement reached before the Regional Labour Commissioner (Central), Asansol on 22.05.2007, it had been agreed between the management and the functioning unions of ECL that mercy petitions of the dismissed employees would be considered if the period of absence was up to nine months and at the relevant time, the workman was within forty-five years of age.

5. Further case of the workman is that in similar situation, in the case of Damu Dakua of Khas Kajora Colliery of ECL and Bagia Nayak of Chora Colliery of ECL, the Hon'ble High Court at Calcutta, directed the management to follow the order of the Coal India Limited, regarding issuance of 2nd Show Cause Notice. According to the workman the enquiry proceeding resulting in his dismissal is illegal and unjust as the Enquiry Officer had filled up printed form in the guise of an enquiry. The punishment of dismissal imposed against the workman is disproportionate to the charge and the workman prayed for setting aside the order of dismissal, reinstatement in service and full back wages with all other consequential benefits.

6. The management of BMP Group of ECL in their written statement urged that Abhijit Bouri, an Underground Loader at Patmohna Colliery had remained absent from his duty from 04.02.1998 without any authorization and a Charge Sheet dated 15.10.1998 was issued under Section 17(i)(n) of Model Standing Order. The workman failed to submit any reply to the Charge Sheet, giving rise to a domestic enquiry. An Enquiry Officer was duly appointed who held enquiry but the workman did not participate. The charge against the workman was established and on the basis of

Enquiry Report and past conduct of the workman an order of dismissal from service was issued bearing Ref. No. BMP/C-6/12-A/1009 dated 12/16.12.1998. It is asserted by the management that the punishment is proportionate to the charge as the workman never informed the management about his absence from duty due to his alleged illness. It is further stated that if the Tribunal find that the enquiry was unfair, in that event the management may be given an opportunity to establish the charge by adducing independent proof and evidence.

7. In order to substantiate his case Abhijit Bouri filed an affidavit-in-chief, reiterating his case in the written statement. He admitted having received the Charge Sheet and in paragraph – 4 of his affidavit-in-chief he stated that he replied to the Charge Sheet and requested the management to allow him to join his duty. He could not attend duty due to his illness and averred that he did not receive any Notice of enquiry for which he could not participate in the enquiry proceeding and the management without issuing any 2nd Show Cause Notice illegally dismissed him from service. It is asserted that he is not a habitual absentee and no Charge Sheet for habitual absence was issued against him. In the affidavit-in-chief the workman stated that his residence was far away from Patmohana Colliery for which he requested the management for his transfer but his request was not considered as a result he faced problem in attending his duty. The workman also stated that he filed mercy petition on 14.02.2012 and 02.03.2012 but the management did not consider the same in accordance with the terms of Memorandum of Settlement dated 22.05.2007. Abhijit Bouri in course of his examination as Workman Witness – 1 produced a copy of the Charge Sheet dated 15.10.1998, which has been marked as Exhibit W-1, a copy of the letter of dismissal dated 12/16.12.1998, as Exhibit W-2, and copies of the Mercy Petitions dated 14.02.2012 and 02.03.2012 as Exhibit W-3 and W-4 respectively.

8. In his cross-examination the workman witness stated that though he faced difficulty in travelling from Bogra Village to Patmohana Colliery for attending duty he did not apply before the employer company for providing him with quarters at Patmohana. He also failed to produce any application seeking transfer to some other place. The workman denied that he intentionally absented from duty from 04.02.1998 to 15.10.1998. In course of cross-examination the witness admitted that he did not inform the employer company the reason for his absence from duty.

9. Mr. Rahul Panwar, Assistant Manager (P/HR) of BMP Group filed an affidavit-in-chief and was examined as Management Witness – 1. In his affidavit-in-chief the witness stated that the workman did not submit any reply to the Charge Sheet for which a domestic enquiry was held. The charge of misconduct was established during the enquiry proceeding, which took place ex-parte. It transpires from the contents of his affidavit-in-chief that the Disciplinary Authority passed an order of dismissal after considering the enquiry proceeding and past conduct of the workman. It is urged that the dismissal of the workman is proper and justified. The management witness has produced the following documents :

(i) A copy of the Charge Sheet dated 15.10.1998 has been produced as Exhibit M-1.

(ii) A copy of the Notice of enquiry dated 18.11.1998, as Exhibit M-2.

(iii) A copy of the Enquiry proceeding, in five pages, as Exhibit M-3.

(iv) A copy of the letter dated 07/08.12.1998 issued by the Chief General Manager of Sodepur Area to the Agent of BMP Group regarding dismissal of Abhijit Bouri, as Exhibit M-4.

(v) A copy of the letter of dismissal of Abhijit Bouri dated 12/16.12.1998, as Exhibit M-5.

The witness stated that he had no document relating to appointment of the Enquiry Officer, nor does he know the name of the Enquiry Officer, who issued the Notice of enquiry.

10. In his cross-examination the management admitted that he was unable to produce any record relating to previous punishment of Abhijit Bouri in course of his service. He also admitted that the Enquiry Proceeding was prepared in the printed Form and that there is no record to show that the Notice of enquiry was served upon the workman before initiating the enquiry proceeding. The management witness denied that the enquiry initiated against the workman was illegal or that the punishment of dismissal was disproportionate to the charge. The witness further admitted that no 2nd Show Cause Notice was issued to the workman and the direction of the Coal India Limited as well as the mandate of the Hon'ble Supreme Court of India were not complied.

11. The crux of the issue which emerges for consideration is whether the dismissal of Abhijit Bouri from service w.e.f. 16.12.1998 is justified. If not, to what relief the workman is entitled to.

12. Mr. Rakesh Kumar, on behalf of the dismissed workman draw my attention to the evidence of MW-1 that the enquiry was held without ensuring the service of Notice to the workman and that the management failed to produce any letter of appointment of the Enquiry Officer and was unable to identify who the Enquiry Officer was. It is argued that the workman had no opportunity to meet the charges levelled against him and the entire enquiry proceeding is a gross violation of the principles of natural justice. It is argued that the Enquiry Report has been submitted in a filled up pro forma without recording of statements of the management witness in first person. The union representative vehemently argued that there was serious miscarriage of justice by not issuing the 2nd Show Cause Notice to the workman even after conclusion of an ex-parte enquiry proceeding, especially when the Disciplinary Authority and Enquiry Officer were not the same person. Mr. Kumar placed reliance upon the decision of the Hon'ble Supreme

Court of India in the case of **Union of India and Others vs Mohd. Ramzan Khan [AIR (1991) SC 471],** which laid down as follows:

> *" When the Inquiry Officer is not the Disciplinary Authority, the delinquent employee has a right to receive a copy of the inquiry officer's report before the Disciplinary Authority arrives at its conclusion with regard to the charges levelled against him. A denial of the inquiry officer's report before the Disciplinary Authority takes its decision on the charges, is denial of opportunity to the employee to prove his innocence and is a breach of principles of natural justice."*

13. It is further argued by the union representative that the principle laid down by the Hon'ble Supreme Court of India was adopted by the Coal India Limited on issuing Circular bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994 and directed its subsidiaries that a 2nd Show Cause Notice is to be issued to the workman after enquiry proceeding in order to give opportunity to meet the findings of the Enquiry Officer. Mr. Rakesh Kumar referred to the Mercy Petitions filed by the workman, which have been marked as Exhibit W-3 and W-4. It is urged that the management did not consider the mercy petition though the period of his absence was only eight months and ten days, which is less than nine months and at the relevant time his age was less than forty-five years. It is submitted that the management of ECL and all functioning unions have executed a Memorandum of Settlement before the Regional Labour Commissioner (Central), Asansol, agreeing to take into consideration such cases of absence.

14. In reply, Mr. P. K. Das, learned advocate for the management of ECL argued that the workman has been dismissed for his unauthorized absence from duty for over eight months, without any intimation to the employer company. It is submitted that though the workman denied having received any Charge Sheet and Notice of enquiry, in his affidavit-in-chief as well as his evidence the workman claimed to have replied to the Charge Sheet which goes to establishment that he has received the Charge Sheet but did not participate in the enquiry proceeding.

15. Learned advocate for ECL however, fairly admitted that the management is not in a position to prove that the Notice of enquiry was served upon the workman before the enquiry proceeding commenced and did not dispute that no 2nd Show Cause Notice was served upon the workman before his dismissal. The management did not respond to the contention that the mercy petitions of the workman were not considered by the management in compliance with the terms of the Memorandum of Settlement dated 22.05.2007. It is submitted that the management may be granted an opportunity to review their decision in consequence of the enquiry proceeding.

16. I have considered the rival arguments in the light of the materials on record. Admittedly Abhijit Bouri remained absent from his duty for over eight months without any authorization and has grossly misused his privilege of working under the management of ECL. There are no qualms that a Charge Sheet for unauthorized absent was issued to the workman and he has received the same. The workman has failed to produce any reply to the Charge Sheet. Therefore, no material is forthcoming to support the claim of the workman that due to his illness he was unable to attend his duty. The facts and circumstances of the case clearly indicate that the situation was rife to initiate a domestic enquiry against the workman for his misconduct and violation of standing order. The pre-condition of starting an enquiry proceeding is that the competent authority has to appoint an Enquiry Officer and the Enquiry Officer is duty bund to ensure service of Notice of enquiry upon the charged employee. The management witness in his cross-examination stated that there was no record to show that the Notice of enquiry was served upon the workman before initiating the enquiry proceeding. On a perusal of the enquiry proceeding (Exhibit M-3), it appears that the enquiry proceeding was recorded in a printed Form by filing up the blanks which also contain a statement that charge was read over and explained in Bengali and Hindi. In fact, the workman did not appear and there is no reason to read out the charge. There is no whisper in the Enquiry Proceeding that the Notice of enquiry was served upon the workman. I find that Mr. Kanailal Pan, Mr. Mangalmoy Sarkar and Mr. Goutam Banerjee were examined as Management Representatives but their statements have not been recorded in the first person. On the other hand, the statements are in the form of reporting by the Enquiry Officer himself.

17. It is an admitted fact that no 2nd Show Cause Notice was issued to the workman before reaching a conclusion that his misconduct was grave enough to attract the punishment of dismissal. In this context it is worthwhile to rely upon the decision of the Hon'ble Supreme Court of India in the case of **Union of India and Others vs Mohd. Ramzan Khan (Supra.)**. The principle laid down was also to be followed by the Coal India Limited, which issued a Circular bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994, directing all its subsidiaries to issue 2nd Show Cause Notice to the employees before taking the final decision of dismissal. In the instant case the workman did not get the opportunity to submit his reply before the Disciplinary Authority, which again amounts to violation of natural justice. The letter of dismissal bearing Ref. No. BMP/C-6/12-A/1009 dated 12/16.12.1998 was issued by the Agent of BMP Group. I find that the Dy. CME / Agent is not the Appointing Authority of the charged employee, as such without any specific concurrence of the General Manager of the Area, the Agent had no jurisdiction to dismiss the workman from his service. In such view of the matter, I hold that the Agent has exceeded his jurisdiction by passing the order of dismissal of the workman bearing Ref. No. BMP/C-6/12-A/1009 dated 12/16.12.1998, not being the Disciplinary Authority or Appointing Authority. The procedure followed by the Enquiry Officer holding the enquiry proceeding is 'ex facie' illegal and violative of natural justice. The order of dismissal also appears to be disproportionate to the charge, without any proof of habitual unauthorized absence of the workman.

18. The evidence on record clearly indicates that two mercy petitions dated 14.02.2012 and 02.03.2012 were submitted by the dismissed workman, praying for allowing him to join his duty in terms of the Memorandum of Settlement signed by the management and union representatives on 22.05.2007. Though these petitions are submitted long after thirteen years from the date of dismissal, the management ought to have disposed the same after considering the facts and circumstances involved in accordance with the terms of the Memorandum of Settlement.

19. In view of my above discussion I find and held that though the workman had remained absent for a long time and his mercy petitions were filed long after thirteen years from the date of his dismissal, the management ought to have considered the same. The enquiry proceeding is manifestly illegal and there has been no prior service of Notice upon the workman intimating him the date and place of holding such enquiry. Consequently, there has been violation of principles of natural justice by not providing opportunity to the workman to represent his case. Non-issuance of 2nd Show Cause Notice and passing of order of dismissal by the Agent, who is neither the Disciplinary Authority nor the Appointing Authority, I hold that the order of dismissal is illegal and is not sustainable under the law. The impugned order of dismissal is therefore set aside. The management shall provide an opportunity of hearing to the workman within one (1) month of communication of the Award and after considering the representation of the workman, if any, to be submitted within fifteen (15) days, shall pass a fresh order on the subject matter and communicate the same to the workman. In view of such facts and circumstances discussed above no order for payment of back wages is passed.

Hence,

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that the Industrial Dispute is allowed on contest. The impugned order of dismissal of Abhijit Bouri, bearing Ref. No. BMP/C-6/12-A/1009 dated 12/16.12.1998, passed by the Agent of BMP Group is set aside. The management shall provide an opportunity of hearing to the workman within one (1) month of communication of the Award and after considering the representation of the workman, if any, to be submitted within fifteen (15) days, shall pass a fresh order on the subject matter and communicate the same to the workman. Let an award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE**,** Presiding Officer

नई दिल्ली, 26 सितम्बर, 2024

का.आ. 1864.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, आसनसोल के पंचाट (सन्दर्भ संख्या **09/2014**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **28/09/2024** को प्राप्त हुआ था।

[फा. सं. एल–22012/43/2014-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 26th September, 2024

S.O. 1864.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No. 09/2014*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **28*/08/2024.***

[F. No. L-22012/43/2014 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 09 OF 2014

PARTIES: Ajit Kora

Vs.

Management of Gourandi Begunia Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.
For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal

STATE: West Bengal.

Dated: 07.08.2024

A W A R D

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/43/2014-IR(CM-II)** dated 30.06.2014 has been pleased to refer the following dispute between the employer, that is the Management of Gourandi Begunia Colliery under Salanpur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

" Whether the action of the Management of Gourandi Begunia Colliery of M/s. Eastern Coalfields Ltd. in imposing a punishment of dismissal on Shri Ajit Kora, U.G. Loader w.e.f. 05.06.2007, vide order No. C-6/36/P-852 dated 22.05.2007/05.06.2007 is just and legal? If not, to what relief the workman is entitled to ? "

1. On receiving Order **No. L-22012/43/2014-IR(CM-II)** dated 30.06.2014 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 09 of 2014** was registered on 15.07.2014 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Mr. P. K. Das, learned advocate for the management of Eastern Coalfields Limited is present. Ajit Kora, the dismissed workman is represented by Mr. Rakesh Kumar, union representative. The case is fixed up today for evidence of the workman witness for the thirtyfifth time. Workman has not appeared before this Tribunal even on a single date.

3. The Management as well as union have filed written statements and the case was fixed up for evidence of workman witness since 09.02.2016. Workman never appeared before this Tribunal for any redressal. The concerned union representing the workman has failed to establish any communication with the workman. Considering all aspects, I am of the view that the workman is not inclined to proceed further with this case and the same is disposed of in the form of a No Dispute Award. The Industrial Dispute is accordingly dismissed and a No Dispute Award be drawn up.

Hence,

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that a No Dispute Award be drawn up in the above Reference case. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2024

का.आ. 1865.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**,आसनसोल के पंचाट (सन्दर्भ संख्या **13/2021**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **28/09/2024** को प्राप्त हुआ था।

[फा. सं. एल–22012/31/2021-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 26th September, 2024

S.O. 1865.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No. 13/2021*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on 28***/08/2024.***

[F. No. L-22012/31/2021 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 13 OF 2021

PARTIES: Sunil Kora

Vs.

Management of Monoharbahal Colliery of ECL and Another.

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.
For the Management of ECL: Mrs. Swapna Basu, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 31.07.2024

A W A R D

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/31/2021-IR(CM-II)** dated 16.08.2021 has been pleased to refer the following dispute between the employer, that is the Management of Monoharbahal Colliery under Salanpur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

"** Whether the action of the Management of M/s Eastern Coalfields Ltd. in relation to its Manoharbahal Colliery under Salanpur Area in dismissing the service of Shri Sunil Kora, UG Loader, U.M. No. 110169 vide their letter dated 29-03-2008 is just and legal? If not, to what relief the concerned workman is entitled to? **"

1. On receiving Order **No. L-22012/31/2021-IR(CM-II)** dated 16.08.2021 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 13 of 2021** was registered on 16.08.2021 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of their witnesses.

2. Mr. Rakesh Kumar, Union representative on behalf of the aggrieved workman filed a written statement on 09.11.2021. In brief, the facts leading to this Industrial Dispute as disclosed in the written statement is that Sunil Kora was posted as an Underground Loader bearing UM No. 110169 and was a permanent employee at Monoharbahal Colliery under Salanpur Area of Eastern Coalfields Limited (hereinafter referred to as ECL). His date of birth is 30.12.1969 and was appointed under ECL on 17.01.1995. Due to illness Sunil Kora could not attend his duty. A Charge Sheet was issued to him on 13.12.2006 for his unauthorized absence from 27.01.2004. Sunil Kora replied to the Charge Sheet, informing that due to his illness he was unable to attend duty and was under medical treatment during this period. In support of the same he submitted his treatment papers. Instead of allowing him to join his duty the management issued Notice for domestic enquiry on 14.02.2008, fixing 19.02.2008 for enquiry. The Enquiry Officer held ex-parte enquiry proceeding without ensuring service of Notice upon the workman. Report of enquiry was submitted without providing any opportunity to the workman to participate. No 2nd Show Cause Notice was served upon the workman and in violation to the mandate of the Hon'ble Supreme Court of India in the case of Md. Ramzan Khan as well as Circular of the Director (P&IR) of Coal India Limited, an order of dismissal was issued against the workman without any opportunity of submitting his representation against the findings of the Enquiry Officer. It is contended that the Hon'ble High Court in a catena of decisions made it incumbent upon the management

to issue 2nd Show Cause Notice before awarding a punishment of dismissal. The union in support of such contention relied upon the decision of the Hon'ble High Court at Calcutta in the case of **Bagia Nayak Vs. Coal India Limited and Others [W.P. No. 2217 of 1995]**. It is further contended on behalf of the workman that the punishment of dismissal of Sunil Kora is disproportionate to the nature of misconduct alleged and lighter punishment should have been awarded. The union relied upon the Memorandum of Settlement dated 22.05.2007 signed by the representative of management of ECL and all functioning unions at ECL, wherein it had been agreed that a Mercy Appeal of the dismissed employee would be considered, if the workman is below forty-five years of age and the period of his absence from duty is below nine months, but in the instant case the mercy petition of the workman has not been considered. Sunil Kora is without any employment to maintain himself and family. It has been urged that the order of dismissal passed against the workman without service of Charge Sheet, Notice of enquiry and 2nd Show Cause Notice is bad in law, punishment is disproportionate to the charge and the order is liable to be set aside with direction for reinstatement of the workman and payment of back wages and other consequential reliefs.

3. The management of Monoharbahal Colliery contested the Industrial Dispute by filing their written statement on 20.12.2022, wherein it is admitted that Sunil Kora was posted as Underground Loader at Monoharbahal Colliery bearing UM No. 110169 and his date of birth is 30.12.1969. According to the management of ECL, Sunil Kora was a habitual absentee and neglected his duty. His attendance was consecutively recorded as poor and it went down to only forty-eight days in a particular year. The specific charge against Sunil Kora is his unauthorized absence from service w.e.f. 27.01.2004 which resulted in issuance of Charge Sheet bearing letter No. MB/06/268 dated 13.12.2006. Workman was asked to submit his explanation for his unauthorized absence from work within a week but he submitted his reply only on 31.12.2007 which was not found satisfactory. Management issued Notice of enquiry bearing Ref. No. BMC/Agent/08/1064 dated 13/14.02.2008, directing Sunil Kora to appear before the Enquiry Officer on 19.02.2008. Reasonable opportunity of hearing was given to Sunil Kora but he did not participate in the Enquiry Proceeding. Enquiry was held on 19.02.2008, 07.03.2008 and 19.03.2008 after issuance of Notice to Sunil Kora but the workman did not participate nor did he make any communication with the Enquiry Officer. Finally, an ex-parte Enquiry Proceeding was held and the charge mentioned in the Charge Sheet was established against the workman. On the basis of the Enquiry Report, the Chief General Manager of Salanpur Area issued a letter dated 29.03.2008, dismissing Sunil Kora from service of the company with immediate effect. According to the management the workman not only absented in unauthorized manner but he wilfully remained absent which adversely affected the work of the company. Management accordingly prayed for dismissing the Industrial Dispute.

4. In support of his case Sunil Kora examined himself as Workman Witness – 1 and filed an affidavit-in-chief. In course of his evidence, he produced the following documents:

(i) Copy of his Identity Card has been produced as Exhibit W-1.

(ii) Copy of the Appointment Letter dated 16.01.1995, as Exhibit W-2.

(iii) Copy of the Letter of dismissal dated 29.03.2008, as Exhibit W-3.

(iv) Copy of the Mercy application dated 20.01.2020, as Exhibit W-4.

The main contention in the affidavit-in-chief is that he did not receive any Charge Sheet. No Notice of enquiry was served upon him. the Enquiry Officer conducted the enquiry ex-parte without ensuring service of Notice and the management without issuing 2nd Show Cause Notice, in violation of natural justice imposed an extreme punishment against him, which is illegal and he should be allowed to join duty with back wages.

5. In course of cross-examination the workman admitted his signature on the reply to the Charge Sheet dated 13.12.2006. His signature has been marked as Exhibit M-1 and the reply submitted by him against the Charge Sheet, has been marked as Exhibit M-1/1. The workman denied the suggestion that he remained absent from duty intentionally till Charge Sheet was issued.

6. After closure of evidence of workman witness on 22.02.2023 opportunity was extended to the management of ECL to adduce evidence and also produce their documents. Mrs. Swapna Basu, learned advocate produced Mr. Devendra Kumar, Assistant Manager (Personnel), as Management Witness -1 but no affidavit-in-chief was filed. Mr. Devendra Kumar was examined-in-chief on oath.

He produced the following documents :

(i) Signature of Sunil Kora on reply to the Charge Sheet is marked as Exhibit M-1

(ii) Copy of the Chargesheet dated 13.12.2006 has been produced as Exhibit M-1/2.

(iii) Copy of the reply against the Charge Sheet submitted by Sunil Kora, as Exhibit M-2 and Exhibit M-1/1.

(iv) Copy of the Notice of enquiry dated 13/14.02.2008 issued to Sunil Kora fixing date for enquiry, as Exhibit M-3.

(v) Copy of the Notice of enquiry dated 11.03.2008, as Exhibit M-4.

(vi) Copy of the Notice of enquiry dated 01.03.2008, as Exhibit M-5.

(vii) Copy of the Notice of Enquiry Proceeding in two pages, as Exhibit M-6.

(viii) Copy of the findings of the Enquiry Officer dated 24.03.2008, as Exhibit M-7.

(ix) Copy of the letter of dismissal dated 29.03.2008, as Exhibit M-8.

7. The witness was unable to give any clear answers and the case was adjourned to 17.10.2023 for further cross-examination of the management witness. In his cross-examination the witness stated that he was not able to produce any document to show that Notice of enquiry was served upon the dismissed workman. No evidence has been adduced by the management witness regarding service of Notice of enquiry upon the workman. Management witness also admitted that no 2nd Show Cause Notice was served upon Sunil Kora and that Sunil Kora had submitted a mercy petition. The matter was referred to the Headquarters of ECL but no reply was given to the concerned person. The witness denied that the workman was dismissed from service by keeping him in the dark about the Departmental Proceeding.

8. The moot question which arises for consideration in this case is whether the dismissal of Sunil Kora from service on 29.03.2008 is just and legal and whether the concerned workman is entitled to any relief.

9. Mr. Rakesh Kumar, Union representative assailing the order of dismissal argued that the management of ECL has initiated the Departmental Proceeding against the workman without service of copy of Charge Sheet, Notice of enquiry and 2nd Show Cause Notice accompanied with Enquiry Proceeding. It is vehemently argued that the entire proceeding against the workman is a manifestation of gross violation of natural justice in as much as no opportunity was given to Sunil Kora to participate in the Enquiry Proceeding or to raise his defence. It is argued on behalf of the dismissed workman that in his reply dated 13.12.2007 (Exhibit M-2), the workman informed that he was unable to attend his duty from 27.01.2004 due to his illness and he was under medical treatment at Kelejora BPHC but management initiated the Enquiry Proceeding in absence of the workman and without ensuring service of the Notice of enquiry upon him. Mr. Rakesh Kumar placed reliance upon a decision of the Hon'ble Supreme Court of India in the case of **Union of India and Others vs Mohd. Ramzan Khan [AIR (1991) SC 471],** which laid down as follows :

> **"** *When the Inquiry Officer is not the Disciplinary Authority, the delinquent employee has a right to receive a copy of the inquiry officer's report before the Disciplinary Authority arrives at its conclusion with regard to the charges levelled against him. A denial of the inquiry officer's report before the Disciplinary Authority takes its decision on the charges, is denial of opportunity to the employee to prove his innocence and is a breach of principles of natural justice.* **"**

It is argued that the principle of law laid down by the Hon'ble Supreme Court of India was resolved to be enforced by the Coal India Limited by way of issuing a Circular bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994, wherein it has been clearly laid down that the charged employee had to be supplied with Enquiry Proceeding and Enquiry Report and a 2nd Show Cause Notice had to be issued to him before taking any final decision of removing him from service. It is submitted that in the instant case the management of ECL violated the terms of their own Circular and the principle laid down by the Hon'ble Supreme Court of India. It is argued that due to such violation of natural justice and non-compliance of the mandatory provisions of law, the order of dismissal, which is improper and illegal, needs to be set aside and the workman should be reinstated in the service with full back wages.

10. Refuting the contention of the union representative, Mrs. Swapna Basu, learned advocate for the management argued that the union has taken a conflicting stand regarding service of Charge Sheet upon the workman. On one hand it is stated that he did not receive Charge Sheet but Sunil Kora in his cross-examination admitted his signature on reply to the Charge Sheet as Exhibit M-1. Learned advocate for the management referred Exhibit to M-3, M-4 and M-5 which are notice of the enquiry, issued in the name of Sunil Kora and argued that three Notice of enquiry were issued to the workman on 14.02.2008, 01.03.2008 and 11.03.2008 and thereby every effort was made to inform the absentee workman to attend the Enquiry Proceeding but he did not participate in the same, being aware of the fact that a Charge Sheet was issued against him for his habitual absence during the preceding three years and his unauthorized absence for more than ten days. Learned advocate argued that the management after giving every opportunity to the workman issued an order of dismissal against him for his unauthorized absence, which is a gross misconduct. It is submitted that he is not entitled to any relief and the Industrial Dispute is liable to be dismissed.

11. I have considered the rival arguments advanced on behalf of the union and management and also examined the materials on record and evidence adduced by both the parties. The workman initially was in a denial mode and claimed that copy of Charge Sheet and Notice of enquiry were not served upon him, thereby he did not have any opportunity to participate in the Enquiry Proceeding. In his affidavit-in-chief Sunil Kora in paragraph-6 stated that he did not receive the Charge Sheet issued by the management. However, he admitted that he submitted a reply against the Charge Sheet, which has been marked as Exhibit M-1/1. The Charge Sheet produced by the management has been marked as Exhibit M-1/2, which bears an imputation that Sunil Kora absented from duty from 27.01.2004 without any leave or authorization and his absence amounted to misconduct under the provision of Clause 26.29 of Certified

Standing Order. There is no reference to any charge under Clause 26.23 of Certified Standing Order, which relates to 'habitual absence'. The Charge Sheet also disclosed that his service would be terminated from the date of his unauthorized absence unless a satisfactory explanation was submitted within a week. The management of ECL has not been able to produce document to prove that Charge Sheet was served upon the workman within time. However, a delayed reply to the Charge Sheet by the workman dated 31.12.2007 amply proves that the workman was informed about the charge levelled against him for his unauthorized absence. It may be gathered from the reply dated 31.12.2007 that the workman was actually absent from duty for more than four years. The ground for absence is disclosed in his reply that he was suffering from serious disease and he was under medical treatment at Kelejora BPHC. It can well be assumed that a person suffering from serious ailment for four years, which allegedly prevented him from attending his work would have proceed to a higher centre for advance medical treatment. The workman did not disclose the nature of ailment and was far short of producing medical documents in support of his ailment. Even at this stage of the Industrial Dispute, when opportunity was given to the workman, he could not produce a single document relating to his medical treatment. The misconduct of the workman is abjectly disapproving.

12. Be that as it may, a misconduct however serious and grave it may be, the ultimate decision has to be arrived by following the principle established by law. It would now be appropriate to consider the mode and manner in which the management of ECL has delt with the charged employee before dismissing him from service. The management in course of their evidence has produced a copy reminder of the Charge Sheet but the same bears the date of Charge Sheet as 13.12.2006. No evidence has been adduced by the management to prove the mode in which the Notice of enquiry dated 13/14.02.2008, 01.03.2008 and 11.03.2008 were transmitted to the workman and whether any of such notice was served upon the addressee. Exhibit M-6 reveals that the Enquiry Proceeding was taken up on 19.02.2008, 07.03.2008 and 19.03.2008. In order dated 07.03.2008 the Enquiry Officer has stated that reply of the Charge Sheet dated 02.01.2008 along with some treatment papers were submitted by the chargesheeted workman. No copy of reply to the Charge Sheet dated 02.01.2008 has been produced by the management before this Tribunal. On none of the dates fixed for enquiry the Enquiry Officer recorded his satisfaction about service of Notice of enquiry upon the workman. While recording the statement of the Management Representative on 19.03.2008 the name of the management representative has neither been recorded nor has he recorded the statement of M.R. in first person. In the Enquiry Report dated 24.03.2008, produced as Exhibit M-7, the Enquiry Officer did not consider the contents of the treatment papers admittedly been submitted by the workman along with the reply to the Charge Sheet. After concluding the Enquiry Proceeding admittedly no 2nd Show Cause Notice nor any copy of Enquiry Report was served upon the workman, seeking his explanation or representation. No formal charge was framed by the Enquiry Officer and in his report, there is no whisper as to the provision of the Clause under which the workman was found guilty. The Enquiry Proceeding appears to be an outcome of paperwork by the management. I further find that even in the letter of dismissal the Chief General Manager of Salanpur Area has not referred to the relevant Clause of the Certified Standing Order under which the accused workman was found guilty.

In the instant case Mr. B. N. Pandey, Enquiry Officer and the Competent authority are different persons. As such non-issuance of 2nd Show Cause Notice to the workman amounted to the violation of the principles of natural justice as well as the mandate of the Hon'ble Supreme Court of India in the case of **Union of India and Others vs Mohd. Ramzan Khan [AIR (1991) SC 471]**, which laid down that when the Inquiry Officer is not the Disciplinary Authority, the delinquent employee has a right to receive a copy of the inquiry officer's report before the Disciplinary Authority arrives at its conclusion with regard to the charges levelled against him, which has been duly adopted by the Coal India Limited in their Circular bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994.

13. The conduct of the workman who has remained absent for more than four years from his place of duty in unauthorized manner certainly deserves no sympathy and he has grossly abused his right contingent to service. Despite such fact I am unable to waive the legal necessities which were required to be fulfilled by the management before arriving at a decision of terminating the workman from his service. The procedure adopted by the management is itself violative of the principle of natural justice and hence the same is unacceptable and the order of dismissal dated 29.03.2008 is set aside. Sunil Kora, the dismissed workman is entitled to be reinstated in service more for the laches on the part of the management of ECL. The workman not having rendered any service to the company for several years and without any evidence on his part that he was not gainfully employed at any other place for his livelihood, I am not inclined to grant him the relief of any back wages during his period of absence. The period of absence from 27.01.2004 till the date of his joining shall be treated as dies non and he shall be entitled to the continuity of service. The Industrial Dispute is accordingly decided in favour of the workman.

Hence,

O R D E R E D

that the Industrial Dispute is decided in favour of the workman on contest. The order of dismissal of Sunil Kora from service bearing Ref. No. C-6/36/P-2937 dated 29.03.2008 issued by the Chief General Manager of Salanpur Area of ECL is not sustainable under the law and is set aside. the management of ECL is directed to reinstate Sunil Kora within one (1) month from the date of communication of this Award. The workman shall not be entitled to any back wages. The period of absence from 27.01.2004 till the date of his joining shall be treated as dies non and he shall

be entitled to continuity of service. Let an award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2024

का.आ. 1866.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, आसनसोल के पंचाट (सन्दर्भ संख्या **12/2020**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **28/09/2024** को प्राप्त हुआ था।

[फा. सं. एल–22012/99/2019-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 26th September, 2024

S.O. 1866.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No. 12/2020*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L** and their workmen, received by the Central Government on 28***/08/2024***

[F. No. L-22012/99/2019 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 12 OF 2020

PARTIES: Nand Kishor Rajak

(dependent son of Late Brahmadeo Rajak)

Vs.

Management of Jambad Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.
For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 24.07.2024

A W A R D

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/99/2019-IR(CM-II)** dated 06.02.2020 has been pleased to refer the following dispute between the employer, that is the Management of Jambad Colliery under Kajora Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

" Whether the demand of Koyala Mazdoor Congress (HMS), Asansol for providing employment on compassionate ground to Shri Nand Kishore Rajak S/o Late Bramhdev Rajak, Ex-Pump Khalasi of Jambad Colliery under Kajora Area who expired on 16.7.1999, by M/s. Eastern Coalfields Ltd. is justified? If so, what relief Shri Nand Kishore Rajak S/o Late Bramhdev Rajak is entitled to and to what extent? "

1. On receiving Order **No. L-22012/99/2019-IR(CM-II)** dated 06.02.2020 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 12 of 2020** was registered on 24.02.2020 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Management of Eastern Coalfields Limited (hereinafter referred to as ECL) contesting the Industrial Dispute, filed their written statement on 12.09.2022.

Nand Kishor Rajak, son of the deceased employee filed his written statement on 24.01.2023 through Mr. Rakesh Kumar, President, Koyala Mazdoor Congress. The dispute in this case is that Brahmadeo Rajak was a permanent employee of Jambad Colliery who died on 16.07.1999 in harness. Nand Kishor Rajak, the dependent son was not provided with employment as a dependent. Whether such act on part of the management is justified and the relief to which the dependent is entitled to. The fact of the case disclosed in the written statement of the union is that Brahmadeo Rajak, Ex-Pump Operator, having UM No. 536566 was posted at Jambad Colliery under Kajora Area of ECL and he died on 16.07.1999, while in the service of the company. According to the Clause 9.5.0 of National Coal Wage Agreement (hereinafter referred to as NCWA) applicable to the Coal Industry, one dependent of the deceased employee is entitled to get employment. Asha Devi, wife of the deceased employee applied for providing employment to her and submitted relevant document before the management of Jambad Colliery. She was asked to appear before the Screening Committee of the Colliery for her employment and the employment proposal was forwarded to the Area Office. Asha Devi was called before the Screening Committee on 08.07.2003. After her screening she was referred before the Initial Medical Examination Board (hereinafter referred to as the IME Board). The proposal of employment of Asha Devi was forwarded to the Head Quarters of ECL. The management of ECL discouraged employment of female dependent and the proposal for her employment was kept pending for several years. The management of ECL persuaded Asha Devi to accept monetary compensation in lieu of employment but she did not accept the same and instead she requested the management for employment of Nand Kishor Rajak, the dependent son. An Industrial Dispute was raised before the Assistant Labour Commissioner (Central), Raniganj over the claim for employment by the dependent son. During the conciliation proceeding management agreed to process the employment proposal of the dependent son and a Memorandum of Settlement was signed. In accordance with such settlement Nand Kishor Rajak submitted his documents in support of his claim. He appeared before the Screening Committee at the Colliery level. The management verified his relationship with Brahmadeo Rajak through Police authority at his native place and after receiving the report, the committee recommended his employment. Screening was done at Area level and he was examined by the IME Board, where he was found medically fit for employment. The Area General Manager recommended the proposal of employment to the ECL Head Quarters. Several quarries made by the Personnel Manager (EMPL), ECL Head Quarters, which were all complied by Nand Kishor Rajak. After ten years the management of ECL regretted the proposal for employment of the son on the ground that his claim for employment was made after a delay.

3. It is the case of the union that initially the dependent wife of the deceased employee submitted the claim for employment after the death of her husband but the matter was kept pending. Thereafter, the dependent son applied for employment and his subsequent application was in continuation of the earlier claim of his mother and the company cannot regret the claim for employment on the ground that it was a delayed claim. Union asserted that the management by not taking any decision delayed the matter for which the dependents of workman cannot suffer. The contention of Nand Kishor Rajak is that he has no source of income for his livelihood and he is badly in need of the employment. The union asserted that the provision for employment to the dependent is based upon the decision of the Coal India Limited, which was adopted by the Joint Bipartite Committee for the Coal Industry in NCWA and the same cannot be treated as compassionate appointment for the dependent. It is asserted that the management is under an obligation, be directed to provide employment to the dependent son and pay monetary compensation to the wife of Brahmadeo Rajak from the date of death of the employee up to the date of providing employment to the dependent son. In support of the claim for employment the union relied upon a decision of the Hon'ble High Court at Calcutta in the case of **Jagadish Bouri @ Madhu Bouri Vs. Union of India and Others [MAT 149 of 2024 with IA No. CAN 1 of 2024, CAN 2 of 2024]**, wherein the Hon'ble Division Bench had granted the prayer for employment of the dependent son even after claim for employment was kept pending for several years.

4. The Agent of Jambad Colliery, representing the management of ECL, in their written statement, refuted the claim for employment of the dependent son. It is their specific case that Nand Kishor Rajak submitted the application for compassionate appointment on 07.11.2011. The matter was examined and the proposal for employment was processed. The Screening committee and the IME Board held necessary screening and medical examination at the Area level. The genuineness of relationship of the claimant with the deceased employee was also established but the

competent authority did not provide employment to the dependent son on the ground that the case is liable to be rejected as per the decision of the Hon'ble High Court at Calcutta in the case of Nemai Kumar Vs. CIL and Others the claim of the dependent was rejected on the ground of delay.

5. According to the management more than eleven years have passed since the death of the employee and the dependent son has submitted his application for employment after inordinate delay. It is further contended that the compassionate employment is not a vested right and it is provided to the family of the deceased employee to tide over the financial crisis due to sudden death of sole bread earner. In the present case the application for employment was field after a very long time and the claim for employment would fail for such delay. In support of their contention management of ECL relied upon a decision of the Hon'ble Supreme Court of India in the case of **Eastern Coalfields Limited Vs. Anil Badyakar and Others [AIR 2009 SC 2534]**. The management accordingly prayed for dismissal of the Industrial Dispute.

6. On behalf of the union, Nand Kishor Rajak filed his affidavit-in-chief reiterating the facts of the case and examined himself as Workman Witness - 1. In course of his examination-in-chief, the witness produced a letter dated 27.08.2018 by which the management regretted the proposal for employment of Nand Kishor Rajak, which has been marked as Exhibit W-12. The witness submitted an application before the management on 20.12.2018 for reconsidering the proposal for employment. The workman witness produced the following documents in support of his case:

(i) Copy of the Death Certificate of Brahmadeo Rajak is produced as Exhibit W-1.

(ii) Copy of the Identity card of Brahmadeo Rajak, as Exhibit W-2.

(iii) Copy of the Service Record Excerpt of Brahmadeo Rajak is produced as Exhibit W-3.

(iv) Copy of the letter dated 07.07.2003 issued by the Personnel Manager, Jambad Colliery addressed to Asha Devi, as Exhibit W-4.

(v) Copy of the letter dated 20.08.2003 issued by the Personnel Manager, Jambad Colliery for pre-employment medical examination of Asha Devi, as Exhibit W-5

(vi) Copy of the letter dated 21.02.2007 regarding payment of family pension, as Exhibit W-6.

(vii) Copy of the application dated 20.01.2010 filed by Nand Kishor Rajak, claiming employment, as Exhibit W-7.

(viii) Copy of the letter of Nand Kishor Rajak dated 07.11.2011, filing documents, as Exhibit W-8.

(ix) Copy of the employment proposal of Nand Kishor Rajak issued by the management of the Colliery and forwarded to the Area Office, as Exhibit W-9.

(x) Copy of the Memorandum of Settlement dated 13.06.2014, as Exhibit W-10.

(xi) Copy of the Report dated 24.02.2016 of three men committee for genuinity of relationship between Nand Kishor Rajak and the deceased employee, as Exhibit W-11.

(xii) Copy of the letter dated 27.08.2018 issued by the Senior Manager (Personnel) Empl/ED, regretting employment proposal of Nand Kishor Rajak, as Exhibit W-12.

(xiii) Copy of the letter dated 18.11.2018 issued by Agent Jambad Collery to Nand Kishor Rajak, rejecting claim for employment as Exhibit W-13.

(xiv) Copy of the application of Nand Kishor Rajak dated 20.12.2018 for review of the decision for providing employment, as Exhibit W-14.

(xv) Copy of the No Objection Certificate from the other legal heirs of Brahmadeo Rajak, as Exhibit W-15.

(xvi) Copy of the Aadhaar Card of Nand Kishor Rajak, as Exhibit W-16.

(xvii) Copy of the Voter Identity Card of Nand Kishor Rajak, as Exhibit W-17.

7. In course of cross-examination the workman witness deposed that his date of birth is 10.01.1984 and he studied up to Class – IV. At the time of his father's death his grandfather was alive and his grandfather did not agree to the employment of his mother, as he wanted his other son to get the employment in place of Brahmadeo Rajak. Witness admitted that his mother did not agree to accept monetary compensation and she wanted her son to get employment. The witness also admitted that he submitted his first application before ECL in the year 2009 after they regretted the employment proposal of his mother. Copy of such application could not be produced by the witness.

8. Mr. Ramjee Tripathi, Assistant Manager (Personnel), Jambad Colliery, filed his affidavit-in-chief on behalf of the management and was examined as Management Witness – 1. It is averred in the affidavit-in-chief that Brahmadeo Rajak, workman of Jambad Colliery died an unnatural death on 16.07.1999 while in service. He also

stated that as per NCWA one of the eligible dependents of the family of the deceased workman is entitled to get compassionate employment for sustaining the family. Nand Kishor Rajak submitted his application for employment on 07.11.2011 and after examining the matter the proposal for employment was processed. The Colliery Screening Committee held screening test on 29.01.2013 and the Initial Medical Examination (hereinafter referred to as IME) was done on 03.04.2015. Subsequently, a screening was done at Area level on 29.04.2015. The relationship of the claimant with the deceased employee was also considered on 13.03.2016. The management then declined to provide employment on the ground that more than eleven years have passed after the death of the employee and the proposal was regretted. The witness produced following documents in support of the management's case :

(i) Copy of the Death Certificate of Brahmadeo Rajak has been produced as Exhibit M-1.

(ii) Copy of the Service Record Excerpt of Brahmadeo Rajak, as Exhibit M-2.

(iii) Copy of the application of Nand Kishor Rajak dated 07.11.2011, claiming employment, as Exhibit M-3.

(iv) Copy of the letter dated 11.01.2013 for screening of Nand Kishor Rajak, as Exhibit M-4.

(v) Copy of the Notice dated 02.04.2015 for appearance of Nand Kishor Rajak before the IME Board, as Exhibit M-5.

(vi) Copy of the letter dated 27.08.2018 issued by the Senior Manager (Personnel) Empl/ED, regretting the employment proposal of Nand Kishor Rajak, as Exhibit M-6.

(vii) Copy of the report of pre-employment medical examination of Nand Kishor Rajak, as Exhibit M-7.

(viii) Copy of the Internal Circular of ECL dated 14.05.2015, as Exhibit M-8.

9. In cross-examination the material statement made by the management witness is that the application for employment was submitted in the year 2011, whereas his father died in the year 1999. Regarding Exhibit M-6, where a reference is made to the case of Nemai Kumar Vs. CIL and Others, the witness responded that the Senior Manager (Personnel) EMPL/ED has not mentioned the citation and number of the case on the basis of which the employment proposal of Nand Kishor Rajak was regretted. The witness produced a copy of Internal Circular of ECL dated 14.05.2015, whereby a dependent is required to submit an application, claiming employment within five years from the date of death of the workman.

10. Mr. Rakesh Kumar, Union representative, arguing the case for Nand Kishor Rajak submitted that on the premature death of Brahmadeo Rajak, the employee, his wife Asha Devi claimed for employment as dependent according to the provisions of Clause 9.5.0 of NCWA. After Screening and IME the proposal for her employment was forwarded to the Headquarters of ECL but no action was taken. The management tried to dissuade her from her claim for employment and persisted her to remain content with monetary compensation. Due to such treatment by the management of the employer company, Asha Devi was in dark regarding the fate of her employment. Nand Kishor Rajak, the dependent son was a minor at the time of his father's death in the year 1999. On attaining majority, when his mother's prayer for employment was pending final consideration, the son submitted an application claiming employment as a dependent. The management delayed in processing the prayer for employment by several years and ultimately on 27.08.2018 (Exhibit M-6) a regret letter was sent to Nand Kishor Rajak, rejecting his claim for employment on the ground of delay. The union presentative vehemently argued that the management of the company has violated the agreed terms of NCWA by not providing employment and causing suffering to the family of the dependent. It is argued that if there was any delay, it is due to acts and omission of the management of the company and not due to the family member of the deceased employee. Mr. Kumar argued that Asha Devi is entitled to a monetary compensation from the date of death of her husband on 16.07.1999 till the date of employment, provided to the dependent son. In support of his claim, a reliance is placed upon a decision of the Hon'ble High Court at Calcutta in the case of **Jagadish Bouri @ Madhu Bouri Vs. Union of India and Others [MAT 149 of 2024 with IA No. CAN 1 of 2024, CAN 2 of 2024]**.

11. Contrary to the argument advanced by the union representative, Mr. P. K. Das, learned advocate for the management of ECL argued that the Tribunal has to adjudicate the scheduled dispute, which relates to the claim for employment of Nand Kishor Rajak and not the claim for employment of Asha Devi. Referring to the evidence on record Mr. Das submitted that it is undisputed that Brahmadeo Rajak, the father of Nand Kishor Rajak, died an unnatural death while in service of the company. Referring to the Internal Circular of ECL dated 14.05.2015 it is submitted that a claim for employment has to be made within five years from the date of death of the employee, but in the instant case the application, claiming employment was submitted by Nand Kishor Rajak for the first time on 20.01.2010 (Exhibit W-7), which is eleven years after the death of his father. Learned advocate submitted that such inordinate delay has destroyed the claim for employment of the dependent son and the company accordingly regretted the prayer for employment on the ground of delay, which is an established principle of law and upheld by the court of law in many cases.

12. The point for consideration at this juxtapose is whether the demand for providing employment to Nand Kishor Rajak on compassionate ground on the death of his father on 16.07.1999 is justified and whether he is entitled to any relief.

13. Having considered the argument advanced by the learned advocate of ECL and the union representative and evidence on record, it would appear from the cross-examination of Nand Kishor Rajak that his date of birth is 10.01.1984 and he was a minor at the time of his father's death. There is no case of the workman that any application was filed by Asha Devi before the company for maintaining the name of Nand Kishor Rajak in the live roster for employment on his attaining majority. The contrary case of the union is that the wife applied for her own employment in place of her husband. Nand Kishor Rajak for the first time submitted an application before the management, claiming employment after ten and a half years from the date of death of his father. It goes without saying that Nand Kishor Rajak has far exceeded the time, permissible for submitting the application for employment. The management cannot be expected to speculate and presume that a son will seek employment after a such long time nor the employer would be expected to provide employment after any duration of time.

14. It is however absolutely inappropriate on the part of the management to remain silent regarding employment of the wife of deceased employee, having no disqualification at the time she submitted her application. The conduct of the officials of the management in prolonging the proceedings for employment without any promptitude does not inspire confidence in my mind in the matter of compliance of the terms of NCWA. The Hon'ble Division Bench of the Hon'ble High Court at Calcutta in the case of **Jagadish Bouri @ Madhu Bouri Vs. Union of India and Others [MAT 149 of 2024 with IA No. CAN 1 of 2024, CAN 2 of 2024]**, while examining such trend of management has appropriately observed as follows :

> *" ……. It appears that the procedure adopted by ECL, is unusually lengthy and opaque and necessary assistance is not being provided to the illiterate, impoverished, financially weak dependants of the deceased employee. We are of the view that the welfare measures sought to be achieved by the NCWA has been followed more in breach than in observance. ……."*

In the instant case Nand Kishor Rajak is victim of circumstances who has followed suit in claim for employment after his mother. In the meantime, laches developed on his part due to delay and the management has taken full advantage of the situation which could have been otherwise treated in a 'welfare society'. In the present case I do not find merit in the claim of the union for providing employment to the dependent son for the inordinate delay in raising the claim for employment.

15. In the instant case invoking the jurisdiction under Section 11A of Industrial Disputes Act, 1947, the appropriate relief according to me which can be provided to the family of the dependent is monetary compensation to Asha Devi from the date of death of her husband on 16.07.1999 till she attains sixty years of age. The management of the company is directed to disburse the monetary compensation to Asha Devi on account to her husband's untimely death within a period of two months from the date of communication of Award. In default, the management shall be liable to pay an interest of nine percent (9%) per annum on the accumulated sum of the monetary compensation from the time specified. The Industrial Dispute is accordingly disposed of in part, in favour of the union.

Hence,

O R D E R E D

that the Industrial Dispute is allowed in part. The claim for employment of Nand Kishor Rajak as a dependent under ECL is disallowed. The management is directed to pay the monetary compensation to Asha Devi, wife of the deceased employee for not providing employment to the dependent family member w.e.f. 16.07.1999 till she attained sixty years of age. The monetary compensation to be paid within two (2) months from the date of communication of the Award. In default, the management shall be liable to pay an interest of nine percent (9%) per annum on the accumulated sum of the monetary compensation till payment. An award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE**,** Presiding Officer

नई दिल्ली, 26 सितम्बर, 2024

का.आ. 1867.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. बी. एम. बी. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण- सह - **श्रम न्यायालय नंबर** II चंडीगढ़ के पंचाट **(संदर्भ संख्या 246/2005)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **29/08/2024** को प्राप्त हुआ था।

[फा. सं. एल–23012/20/2004-आई. आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 26th September, 2024

S.O. 1867.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No.246/2005*)*** of **the Central Government Industrial Tribunal-cum-Labour Court NO 2, Chandigarh** as shown in the Annexure, in the industrial dispute between the Management of **BBMB** and their workmen, received by the Central Government on ***29/08/2024***

[F. No. L-23012/20/2004– IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Mr. Kamal Kant, Presiding Officer.

ID No. 246 /2005
Registered on:- 09.08.2005
Daulat Ram S/o Mani Ram C/o Shri Hem Prabh S/o Sh. Bali Ram, R/o Village Bhayarta, P.O. Chanahan, Teh. & Distt. Mandi (HP).

……....Workman

Versus

1. Bhakra Beas management Board, Madhya Marg, Sector 19-B, Chandigarh through its Chairman.

2. The Chief Engineer, BSL Project Sundernagar Township, Distt. Mandi, (HP).

…..Respondents/Managements

AWARD

Passed on:- 15.07.2024

Central Government vide Notification No.L-23012/20/2004-IR(CM-II), dated 07.07.2005, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

""Whether the demand of Shri Daulat Ram for reinstatement in the services of BBMB, Sunder Nagar is legal and justified? If so, to what relief the concerned workman is entitled and from which date?

1. The brief facts, related to the case are that the construction of Beas Sutluj Link Project{hereinafter called as BSL(P)} started in the year 1962 under Beas Control Board, which was constituted on 10.02.1961 with its headquarter at Sundernagar and this project was under the control of Centre Government, who had been constructing, maintaining, operating and administrating it through various Boards in different phases. After passing of Pb. Re-Organisation Act, 1966(hereinafter called "Re-Organisation Act") Beas Control Board was replaced by Beas Construction Board (hereinafter called "BCB"). The workman was employed by BCB on 01.10.1971. The workman who was employed in Beas Project(Unit-1) become the employee of Bhakra Beas Management Board(hereinafter called as BBMB) in pursuance of proviso (1) of Section 80(3) and Section 80(5) of Re-organisation Act and the workman become the employee of the Centre Government under the management of B.B.M.B. from 15.05.1976. The workman has completed 240 days in every calendar year and was not interrupted till his retrenchment. The employer made a bulk retrenchment of project employees in the year 1977 and 1978 and also in stages thereafter till 1984. The workman was also retrenched by the employer on 29.11.1978 on account of reduction in strength due to part completion of the BSL(P) and re-employment certificate was issued by the office of re-settlement B.S.L/B.B.M.B. Sundernagar for the re-employment of the retrenched workmen of B.S.L.(P)(BBMB) in accordance with provision of the Act. After the retrenchment of the workman, thousands of other persons were appointed secretly by employer, violating Section 25-G and Section 25-H of the I.D. Act, 1947. The employer is also doing unfair labour practices as defined in Section 2(R)A of the ID Act. Management has also violated the provisions of Rules 77 and 78 of Industrial

Dispute(Central) Rule, 1957(hereinafter called "The Industrial Rules"). By filling vacant posts, the employer declared some posts as surplus and retrenched the employees working on those posts.

2. It is also maintained that the present workman and other workmen have filed a Civil Writ Petition No.403/1996, titled as Sant Ram and 87 others Vs. BBMB in the Hon'ble High Court of Shimla for their re-employment and in the said writ petition management filed reply dated 16.04.1996 by way of affidavit and admitted that retrenched workmen are employee of BBMB. The workmen have then withdrew the writ petition and filed civil suits for declaring them as a retrenched workmen of BBMB before the Sub-Judge, 1st Class, Sunder Nagar, Distt. Mandi(HP), on 21.01.1997 and later on those suits were decided on 05.07.2002 and all plaints were returned to the workmen to be filed before the competent authority on the basis of which the present proceedings were initiated after referring of the dispute of workman from the Ministry of Labour on 07.07.2005. Thereafter, management filed writ petition before the Hon'ble Punjab & Haryana High Court against the order of Ministry on 07.07.2005 and the same was dismissed on 07.05.2007 and Special Leave Petition filed bearing nos.16939-17007 of 2007 in Hon'ble Supreme Court of India by the management was also dismissed on 08.07.2014. It is therefore, prayed that the claim petition of the workman may kindly be allowed and workman be continued in the service of the management and be regularized and further be given all the consequential benefits.

3. Management filed written statement, alleging therein that workman is Ex-work charged employee of Beas Construction Board, which was constituted under Section 80(1) of the Re-organisation Act. The workman was retrenched after completion of the work of BCB in the year 1978. The workman was paid terminal benefits i.e. retrenchment compensation, gratuity, ex-gratia amount on account of his retrenchment from BCB as per provisions of ID Act. It is further maintained that BCB and present management are two distinct and separate entities. It is also maintained that construction of Beas Project was undertaken by the Punjab Govt. Irrigation Department prior to the re-organisation of the erstwhile State of Punjab on 01.01.1966. After re-organisation the work of BSL(P) was taken over by the Central Govt. on behalf of partner states of Punjab, Haryana and Rajasthan. The Central Govt. constituted BCB under Section 80(5) of the Re-organisation Act and further stipulated that any component of Beas Project in relation to which the construction has been completed be transferred by the Central Govt. to Bhakra Management Board(hereinafter called as BMB) constituted under Section 79(1) of the Re-organisation Act. It is further stated under Section 80(5) of the Re-organisation Act that BMB would be re-named as BBMB when any component of Beas Project was transferred under Section 80(6) of the Re-organisation Act. The workman was employed by the BCB. Thus, the workman never remained the employee of management. However, it is stated that 1093 work-charged and 12 contingent paid employees of Beas Project were sent on job order basis to Ranjit Sagar Dam, Punjab. They were taken over by the management under the benevolent policy of the Central Govt. as Central Govt. had given directions to BBMB to absorb these employees. The remaining work-charged employees were not entitled for the said benefit. Even work-charged employees of the BCB had filed a petition in the Hon'ble Supreme Court of India, titled as ***Jaswant Singh and another Vs. Union of India & Anr., 1979 SCC 440,*** in which their claim for absorbing them in BBMB is not granted instead their retrenchment from BCB was upheld. Remaining averments have been denied and it is stated that the claim of the workman is hopelessly time barred and the workman has no legal enforceable right to claim employment in BBMB. It is prayed that claim be dismiss.

4. A replication was also filed by workman contravening the facts taken in written statement as reiterating the facts as stated in claim petition.

5. Parties were given opportunity to lead evidence.

6. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A and has been cross-examined by the learned law officer of management. He also placed on Discharge Certificate (Ex.AW1/A), Identity card (Ex.AW1/B) and (Ex.AW1/C) and also school leaving certificate (Ex.AW1/D).

7. Moreover, no evidence has been given by the management in this case. Vide order dated 03.03.2021 the then Presiding Officer, A.K. Singh fixed the case for filing written arguments and the case remained pending for arguments. Even no evidence has been led by the management in this case.

8. While arguing the case, learned Law Officer for the management contended that initially Beas Control Board was constituted in the year 1960. BCB was constituted in the year 1966 and all the projects were transferred from Beas Control Board to BCB in the year 1966 thereafter as per Section 79 of the Punjab Re-organisation Act, BMB was constituted for administrative, maintenance and operation of various works as mentioned in Section 79 itself. Section 80(6) of the Punjab Re-organisation Act provides that BMB constituted under Section 79 of the Act shall be re-named as BBMB when any of the components of the Beas Project has been transferred under sub-section 5 and the BCB shall cease to exist when all the component of the Beas Project have been so transferred. All the projects under BCB were completed in the year 1984 and BCB ceased to exist in 1984. Present workman was employed as work charged employee on 01.10.1971 and was retrenched on 29.11.1978. All similar work charged employees including the present workman was engaged by the BCB which ceased to exist in the year 1984 therefore, the workmen cannot be termed as the employees of the BBMB because there does not exist BCB which was his parent department. Moreover, the Hon'ble Supreme Court in the case titled as ***Jaswant Singh and another Vs. Union of India & Anr.,***

1979 SCC 440 has held that work charged employees were bound by the settlement dated June 28, 1977 effected by the management and also by the award 2-C of the year 1971 before Sh. H.R. Sodhi, Presiding Officer, CGIT-Chandigarh between workman and employees of the Beas Construction Board, Sunder Nagar and published in the gazette on 15.06.1974 of the Govt. of India.

9. So far as the claim of the workman regarding re-employment after retrenchment on 29.11.1978 is concerned, workman was not entitled for re-instatement as in a case under reference no.2-C of 1971 decided by Sh. H.R. Sodhi, the then Presiding Officer, CGIT-Chandigarh, it was held that management in order to establish an industrial peace and to secure the work charge employees after completing the work can engage after completion of project at any time within 6 months for the maintenance of staff for project of any work if it is required to those work charged employees in order to seniority who have put 10 years of service. The relevant portion of para is reproduced as below:

> ***"It is accordingly, directed that at the time of completion of the Project or at any other time within six months thereof for the maintenance staff for the Project or any of its Works if it is required to be recruited or transferred from any department of the State Governments or of the Central Government, the offer shall first be made to the work-charged employees in order of their seniority who have put in 10 years' continuous service or more under the Board in that category or trade where the vacancy occurs subject to the medical fitness of such workmen. The scale of wages as applicable to the workmen will not, however, be disturbed to their prejudice nor their continuity of service affected."***

10. Because the present workman had not completed 10 years of service so he is not entitled for re-employment. Learned representative for the management further contended that in this case workman was retrenched on 29.11.1978 after receiving due retrenchment compensation etc. and now he is claiming re-employment under Section 25-H of the Act and his claim is hopelessly time barred as he has filed the present claim petition on 20.07.2005. To support this view he has placed reliance in the case titled as ***Chief Engineer Ranjit Sagar Dam & Anr. Vs. Sham Lal, AIR 2006, Supreme Court 2682,*** wherein in identical matters Court has not entertained writ petition due to inordinate delay. In the present case there is a delay of about 27 years. He also relied upon the case titled as ***Ram Chand Vs. The BBMB and another, CWP no.2787 of 2018, decided on 03.12.2018***(Annexure R-4) where the Hon'ble Himachal Pradesh High Court has held that dispute if any ought to be raised within a reasonable period as the ID Act does not prescribed time limit for referring such dispute. In the present case workman was engaged as Beldar in the year 1971 and was discharged on 29.11.1978 and he has sought re-employment after 34 years which was held to be highly time barred. Thus, he contended that claim of workman is time barred. Workman was discharged on 29.11.1978 and thereafter he filed present claim before the Labour Conciliation Officer.

11. While arguing the case, learned AR for the workman contended that in this case workman was discharged on 29.11.1978 due to reduction in strength and he was issued discharge certificate by Sub Divisional Officer, BBMB Sundernagar. He referred to Section 25-H of the ID Act which provides re-employment of retrenched workman. He further has drawn the attention of the Court towards the statement of the workman. He was required to be adjust in view of under Section 25-G of the Act by the management Discharge Certificate was issued by the Management. He was not given any employment. While arguing further, learned AR for the workman referred to Rule 77 and 78 of the Industrial Dispute Central Rule 1957(hereinafter called Industrial Rule). Rule 77 provides maintenance of seniority list of workman and it states that before any worker is retrenched the appellant-establishment is required to place on the notice board the seniority list of all the workmen who were to be retrenched but nothing has been done in this regard before retrenchment of the present worker. She also referred to Rule 78 which provides that as and when any vacancy incurred then retrenched workmen were required to be given registered notice but nothing was done by the management. Moreover, question of limitation does not arise as no limitation period has been prescribed under the Act for seeking relief under Clause (d) of Sub-Section (1) of Section 10 of the ID Act. Learned AR for the workman further contended that even reference made by the Government dated 07.07.2005 was challenged by the management in the Hon'ble Punjab & Haryana High Court vide Writ Petition No.3100 of 2006 and their writ petition was dismissed by the Hon'ble High Court on 07.05.2007. Even SLP filed against the order dated 07.05.2007 was upheld by the Hon'ble Supreme Court in SLP No.16979/2007 dated 08.07.2014.

12. I have given due consideration to the arguments advanced by the learned AR for the workman and also for the management.

13. The management relied upon mainly in this case on the case titled as ***Jaswant Singh and another(supra),*** which is very material for decision of this case. The said judgment deals with two types of petitioners. First type of petitioners were employed by the BCB on purely temporary basis and they had also given written undertaking confirming the term of their appointment. The BCB appointed the first type of petitioners on ad hoc basis with a clear understanding that they will have no right to be retained in service after the completion of the Beas Project. They are Engineers, Section Officer, Accounts Clerk, Teacher etc. and they have claimed their parity with other employees who belonged to the services of the Punjab, Haryana and Rajasthan Governments and who were serving on deputation in connection with the works of the BhakraNangal Scheme.

14. In respect of these employees, it was held as follow:-

"To sum up, we are of the opinion that the petitioners are employees of the Central Government. Their conditions of service will be primarily governed by the terms of their appointment but, if they are entitled to the benefit of any of the rules of the Central Civil Services (Temporary Service) Rules 1965, they may make representations in that behalf to the appropriate authorities. It is, however, not possible for this Court to grant to the petitioners any of the reliefs claimed by them as arising out of the provisions of the aforesaid rules, including the relief by way of a declaration that they shall be deemed to be in quasi-permanent service under rule 3. We are further of the opinion that the petitioners have no right to be transferred to the services of the Bhakra Management Board, now re-named as the Bhakra Beas Management Board. Lastly, the proposed retrenchment of the

petitioners does not offend against the guarantee of equality contained in articles 14 and 16 of the Constitution, since the petitioners and the Deputationists belong to two different and distinct classes."

15. As regards, second type of employees i.e. work charged employees the judgment deals in Para 41, 42, 43, 44, 45, 46 and 47 which read as follow:-

"41. A work-charged establishment broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the work.

42. The entire strength of labour employed for the purposes of the Beas Project was work-charged. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. They do not get any relief under the Payment of Gratuity Act nor do they receive any retrenchment benefits or any benefits under the Employees State Insurance Schemes.

43. But though the work-charged employees are denied these benefits, they are industrial workers and are entitled to the benefits of the pro- visions contained in the Industrial Disputes Act. Their rights flow from that special enactment under which even contracts of employment are open to adjustment9 and modification. The work-charged employees, therefore, are in a better position than temporary servant like the other petitioners who are liable to be thrown out of employment without any kind of compensatory benefits.

44. The record of Writ Petition No. 4505 of 1978 shows that offers of alternative employment were made to the work- charged employees and many of them have accepted those offers. The rule of 'last come, first go' has also been consistently adopted while retrenching the work-charged employees. In fact the work-charged employees possess a unique right as industrial employees since, by reason of section 25J(1) of the Industrial Disputes Act, the provisions of Chapter VA, "Lay-off and Retrenchment", have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing orders) Act, 1946.

45. There were in all about 36000 work-charged employees working on the Beas Project. Out of them, about 26000 have already accepted retrenchment compensation under the settlement arrived between the workmen and the management in the conciliation proceedings held by the Regional Labour Commissioner (Central), New Delhi, under section 12 of the Industrial Disputes Act, 1947. All the 12 unions of which the work-charged employees are members were parties to the said conciliation proceedings. By reason of section 18(3)(d) of the Industrial Disputes Act, a settlement arrived at in the course of a conciliation proceeding is binding on all persons who were employed in the establishment to which the dispute relates, whether they were employed on the date of the dispute or subsequently. In Ramnagar Cane and Sugar Co. Ltd. v. JatinChakravorty and ors., it was held by this Court that it is not even necessary, in order to bind the work men to the settlement arrived at before the conciliator, to show that they belonged to the union which took part in the conciliation proceedings, since the policy underlying section 18 of the Act is to give an extended operation to such settlements. In the instant case, all the 12 unions which represented the workmen on the work-charged establishment were parties to the conciliation proceedings. The settlement will therefore bind all the work-charged employees.

46. Apart from the settlement in the conciliation proceedings, an award was made by the Industrial Tribunal, Central, Chandigarh, in Reference No. 2-C of 1971, in an industrial dispute between the work-charged employees of the Beas-Sutlej Link Project, Sundernagar, with which we are concerned, and the management. Under that award, as stated in the award itself, a consent formula was evolved to which the workmen "virtually agreed". The benefits which flow- to the work- charged employees under the aforesaid award dated May 15, 1974, have been accepted by almost all the work- charged employees, involving a burden of about Rs. 3 crores on the employers.

47. Since the work-charged employees are bound by the settlement dated June 28, 1977 effected between them and the management in the conciliation proceedings and since they are also bound by and have accepted benefits under the consent award dated May 15, 1974 they are not entitled to any rights apart from those flowing from the aforesaid settlement and the Award. SLP No.1246 of 1979 which is filed to challenge the Award and C.M.P. No.2077 of 1979 which is filed for condonation of the delay of over four and half years caused in filing the SLP shall have to be dismissed."

16. Thus, from the above observation of Supreme Court it is clear that work charged employees are engaged on a temporary basis and their appointments are made for the specified work and their service comes to an end on the completion of work for the sole purpose of which they are employed.

17. Para 43 provides that work charged employees are industrial worker and entitled to the benefit of the provisions contained under the Industrial Disputes Act. Their rights flow from that special enactment under which even contracts of employment are open to adjustment and modification. Para 45 as reproduced above further provides that in the conciliation proceeding it has been held that there were about 36000 work charged employees working on Beas Project out of them 26000 has already accepted retrenchment compensation under the settlement arrived between the workmen and the management in the conciliation proceedings held by the Regional Labour Commissioner(Central), New Delhi under Section 12 of the ID Act. The said settlement is binding on all the work charge employees who are working in the establishment to which the dispute relates. In para 46 it is further stated that apart from the settlement in the conciliation proceeding an award was made by the CGIT Chandigarh in reference no.2-C in an industrial dispute between the work charged employee of the Beas Sutlej Project, Sundernagar with which we are concerned and the management. A consent formula was evolved to which the workmen virtually agreed. In the last para 47 itself specifically stated that work charged employees are bound by the settlement and award May 15, 1974 and they were entitled to rights those flowing from the settlement and award.

18. So far as the settlement executed between the work charged employees and management through unions, the same has not been produced by the management despite opportunity was given to file the same. Thus, adverse interference can be drawn against them. To support this view, reliance can be placed to the judgment of Hon'ble Punjab & Haryana High Court in case held as***2001(3) RSJ 382 Ambika Parashad Versus Punjab Urban Planning and Development Authority Chandigarh and Another*** **wherein it has been** held **"that respondent has not produced record in the Labour Court to prove that Workman has not completed 240 days of service though application was submitted by the Workman for production of record held that a person in possession of the best evidence has to produce the same, otherwise adverse inference can be drawn against the said party".** In this case also as per order dated 01.05.2024 of this Tribunal. Respondent were asked to produce the settlement arrived between the 12 union of the work charged employee and management under Section 12 of ID Act before the Regional Labour Commissioner, New Delhi and all the work charged employee were bound by the said settlement. However, despite of availing 2-3 opportunities i.e. 20.05.2024, 20.06.2024 and 09.07.2024 the said policy was not produced and as such adverse inference can be drawn against the management in view of the above law.

19. As regards award passed by Central Govt. Industrial Tribunal, Chandigarh, the relevant claim of the work charged employees was regarding their regularization services and the finding given by the Tribunal is as follow:-

"Regulation of Services of the workcharged employees.

It is an un-disputed fact that the entire strength of labour as employed in the Project is workcharged. The institution of workcharged establishment is not only necessary but sometime unavoidable. These workmen are engaged on temporary basis and their services are utilized for the execution of a specified work for which they may be suited. From the very nature of employment the services of such workman automatically come to an end on the completion of the work. A workcharged employee does not get any relief under the Payment of Gratuity Act nor is he benefitted by the employees state Insurance Scheme. He does not indeed enjoy any retiral benefits. Before partition of the country in 1947 it was not usual to have project, construction of which required a number of years to complete but after constituting ourselves into a democratic Republic and the Government having taken in hand five year plans for development of the country there are various schemes involving the construction of works for a period extending over several years as is the case of the instant Project. It commenced in 1962 and more than 12 years having passed the completion might take another few years. In such situation it seems reasonable and fair that a workman who has, like a regular employee, spent the part of his life ranging from 5-10 years upto 20 year, should not be thrown on the road and must be assured some benefits as are available to regular staff. The other aspect of the matter is that the employer could not compelled to retain workcharged employees after the work for which the latter had been engaged is completed, as after all, he was employed before a particular job and the employer, be it the Government or any of its public undertakings, cannot taken upon itself the responsibility of that workman for all time to come. It can be well argued that such a workmen should feel happy and content that instead of remaining un-employed be got employment for a long time.

To assure Industrial peace and economic justice to such class of workmen some balance has in my opinion to be stuck between the two extremes. It is the duty of the State under the Directive Principles enunciated in part 4 of the constitution to secure and protect that social order in which justice, social and economic could be had by all institutions of national life. I fell that it is equally the duty of an adjudicator of industrial disputes charged with the duty of administering social justice to be guided by the fundamentals contained in this chapter though he has to bear In mind the limits of the economic capacity of the employer and Endeavour must have ever be made to secure work for every citizen do in our present economy. It is not possible to immediately achieve that object. The workman employed by the respondent management are drawn from different states out of which I am informed about 8/10 thousands are from Punjab about 22000 from Himachal Pradesh and the remaining from the states of Rajasthan and Haryana. Some of the workmen are from U.P and Bihar and a handful from Kerala. The board hasby and large been consistently following the Punjab pattern in the matter of wage structure, revision thereof from time to time and grant of dearness allowance. It is only with regard to categories not appearing in the common Schedule of Rates prepared by the erstwhile United State of Punjab that the board took its independence decisions on the recommendations of its own standing committee.Even Himachal Pradesh Government generally followed the Punjab policy.The state government of Punjab in its wisdom, and I should say rightly has declared that the services of work charged employees in building and roads branch who had worked for 10 years or more would stand regularized in the sense that the workmen would be treated at par with those in the regular service of the state government.The benefit of this announcement was afterwards extended to the employees of its irrigation branch as well at the workman who held from Punjab continue to stay in their parents state the services of those who had put in 10 years or more would have been regularized the respondent management too in pursuance of its policy to follow the Punjab pattern might have regularized the services of at least of those workmen who had come from Punjab but any such course would have created awkward situation as the workmen from other States could not be discriminated in this respect.Moreover financial implications and other complications are involved.

In such circumstances stated aboveI would have directed that the services of those of the workman who have been continuously employed for more than 10 years should be regularized. But the other problems arising from such a direction including financial impact on the employer cannot be lost sight of The Central Government through the board is only managing on behalf of the state of Punjab, Rajasthan Haryana and Himachal Pradesh who are partners in the venture.Several aspects of the question were discussed with the workmen and the management in the course of arguments and a formula evolved to which the workman virtually agreed and I feel that such a solution as stated hereunder is quite just to all the parties provided it is work out, honestly stated. No doubt,what is referred to me is the matter of regularization of the services of work charge employees, but the directions that I am issuing in my opinion, amount to only granting lesser relief than claimed by the workmen. The management can also have no grievance if it wants industrial peace and is anxious to secure employment to the work-charged employees after the completion of the work. It is accordingly, directed that at the time of completion of the Project or at any other time within six months thereof for the maintenance staff for the Project or any of its Works if it is required to be recruited or transferred from any department of the State Governments or of the Central Government, the offer shall first be made to the work-charged employees in order of their seniority who have put in 10 years' continuous service or more under the Board in that category or trade where the vacancy occurs subject to the medical fitness of such workmen. The scale of wages as applicable to the workmen will not, however, be disturbed to their prejudice nor their continuity of service affected. The workmen have expressed an apprehension that near the completion of the Project trades of some of them might be changed so that it could be said that a suitable workman needed for a particular job was not available and an outsider was therefore necessary to be employed. To protect the workmen against this possible denial of their rights it is further directed that category or trade of no workman shall be changed within one year preceding the completion of the Project without his consent in writing and that if any such change without consent is made it will have no consequence inasmuch as such a workman will be entitled to the job of his earlier trade provided the vacancy relates to that trade. As regards those of the workmen who cannot be absorbed on the regular maintenance staff. I have no reason to doubt that the State Government who are beneficiaries under the Project and also the Central Government will make every reasonable effort to get them re-employed at any other Project or work whether in any one of these States or in any other part of the country where there is a need for workmen of those trades."

20. A perusal of aforesaid findings made it ample clear that the order has been passed by the then learned Presiding Officer, CGIT, Chandigarh to maintain industrial peace and to secure employment to the work charged employees after the completion of the work and it was also held by the learned CGIT thatState Govt. who are beneficiary under the project and the Central Govt. will make every reasonable effort to get those workmen re-employed at any other

project or work whether in any one of these States or in any other part of the country where there is a need of workmen of those trades.

21. Admittedly, in this case, no effort was made by the respondent to give any employment after the retrenchment of the workmen and even there is non-compliance of Rules 77 and 78 of Industrial Rules. The same are reproduced below:

> ***77. Maintenance of seniority list of workmen****. -The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated to be arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.*
>
> ***78. Re-employment of retrenched workmen. -*** *(1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies by registered post to every one of all the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time thereafter:*
>
> *Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the senior-most retrenched workmen in the list referred to in rule 77 the number of such senior-most workmen being double the number of such vacancies:*
>
> *Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen:*
>
> *Provided also that if a retrenched workman, without sufficient cause being shown in writing to the employer, does not offer himself for re-employment on the date or dates specified in the intimation sent to him by the employer under this sub-rule, the employer may not intimate to him the vacancies that may be filled on any subsequent occasion.]*
>
> *(2) Immediately after complying with the provisions of sub-rule (1), the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under that sub-rule:*
>
> *Provided that the provisions of this sub-rule need not be complied with by the employer in any case where an intimation is sent to every one of the workmen mentioned in the list prepared under rule 77.*

22. However, the present work charged employee and other work-charged employees have been retrenched long back and even at the stage it is impossible to re-employe them. However, certainly in respect of workcharged employees present Respondent was directed by the Hon'ble Supreme Court in Judgment of Jaswant Singh (Supra) to give benefits in terms of settlement and award dated 15.05.1974. The main purpose of Hon'ble Supreme Court and Ld. CGIT Chandigarh was to rehabilitate to some extent the work charged employees and restore peace and congenial atmosphere that is why Ld. CGIT Chandigarh had given directions to all state to re-employe them. Thus, it does not lie in the mouth of present Respondent that no relief can be granted against present Respondent as petitioners are not their employees.

A. So far as this argument of Ld. AR of the management that those work charged employees only who have completed 10 years of service were required to be adjusted within 6 months from their retrenchment is concerned, the same is devoid of merit as no effort was made by the management to adjust the work charged employees. Moreover, no documentary evidence has been produced that any effort was made to adjust the workman after his retrenchment. Further, Ld. CGIT Chandigarh in its last lines concluded as under:-

> ***"As regards those of the workmen who cannot be absorbed on the regular maintenance staff. I have no reason to doubt that the State Government who are beneficiaries under the Project and also the Central Government will make every reasonable effort to get them re-employed at any other Project or work whether in any one of these states or in any other part of the country where there is a need of workmen of those trades"***

Nothing has come on record that above directions were complied with.

23. Moreover, in the absence of production of settlement between work charged employees and management, it cannot be interfered what were the terms and conditions in the said settlement. Further, CGIT Chandigarh has fixed ten years time and accrual of vacancy within six months keeping in view the facts and circumstances of the case and has evolved his own formula to bring peace and harmony between work charged employees and management but it cannot be said to be a universal policy in the absence of production of settlement between work charged employees and management. However, no effort was made to adjust the petitioners in view of order of CGIT.

24. As regard, this contention of learned AR of management that petitioners were not the employees of the BBMB but were the employees of BCB, the same is devoid of merit as Discharge certificate was issued by the BBMB. Moreover, as per respondent Beas Control Board was constituted in the year 1960. BCB was constituted in the year 1966 and all the projects were transferred from Beas Control Board to BCB in the year 1966 thereafter as per Section 79 of the Punjab Re-organisation Act, BMB was constituted for administrative, maintenance and operation of various works as mentioned in Section 79 itself. Section 80(6) of the Punjab Re-organisation Act provides that BMB constituted under Section 79 of the Act shall be re-named as BBMB when any of the components of the Beas Project has been transferred under sub-section 5 and the BCB shall cease to exist when all the component of the Beas Project have been so transferred. All the projects under BCB were completed in the year 1984 and BCB ceased to exist in 1984. When all work of BCB stands transferred to BBMB so it cannot be said that BBMB is separate identity than BCB. Rather BCB has merged in BBMB. Moreover, Hon'ble Supreme Court in Jaswant Singh case(supra) in respect of work charged employees has no where stated that relief can be sought by work charged employees only against the BCB. So contention of Ld. AR of the management that BCB and BBMB are two separate entities is devoid of merit.

25. So far this argument of Law Officer for the respondent that the case is hopelessly time barred is concerned, the same is again devoid of merits as there was non-compliance of Rule 77 and 78 of Industrial Rules which has been reproduced above. Moreover, there is no limitation period prescribed for filing a reference. Moreover, reference was received in the year 2005 and thereafter, several rounds of litigations have taken place. So far as case laws on the point of limitation the same are not attracted in the present case as there was no compliance of Judgment of Jawant Singh case (Supra).

26. However, it is added that workman was allowed terminal benefits as admitted by him. Moreover, it is also not case of the petitioner that there is breach of Section 25 F of the Act.

27. Further, there was non-compliance of Jaswant Singh Case (Supra), Reference No.2C of 1971 and Rule 77 & 78 of Industrial Rules and in this case it would be highly difficult to re-employe the workman. The only remedy left is to compensate the workman in term of money.

28. Keeping in view the fact and circumstances of the present case and other connected case of similar nature the following scheme of compensation is deemed fit by this Tribunal:

i. Work charged employee who has completed 5 years of service shall be entitled for Rs.50,000/- along with interest @9% per annum as compensation from the date of moving of application till the realization of amount.

ii. Work charged employee who has completed less than 5 years but more than 1 year would be entitled Rs.25,000/- along with interest @9% per annum from the date of moving of application till the realization of amount.

iii. Those employees who have not completed 1 year will not be entitled for any compensation in the present case.

The present work charged workman was employed on 01.10.1971 and was retrenched on 29.11.1978 as mentioned in Discharge Certificate which is placed on file issued by Sub Divisional Officer, BBMB Sundernagar, and has worked for 7 years and about 1 month (more than 5 years) so he is entitled of Rs.50,000/- along with interest @9% per annum from the date of moving the application till its realization.

29. The reference is answered accordingly and stands disposed off.

30. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

KAMAL KANT**,** Presiding Officer

नई दिल्ली, 26 सितम्बर, 2024

का.आ. 1868.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. बी. एम. बी. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण-** सह - **श्रम न्यायालय** नंबर II चंडीगढ़ के पंचाट **(संदर्भ संख्या 211/2005)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **29/08/2024** को प्राप्त हुआ था।

[फा. सं. एल–23012/39/2004-आई. आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 26th September, 2024

S.O. 1868.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 211/2005*)*** of **the Central Government Industrial Tribunal-cum-Labour Court NO 2, Chandigarh** as shown in the Annexure, in the industrial dispute between the Management of **BBMB** and their workmen, received by the Central Government on **29*/08/2024.***

[F. No. L-23012/39/2004– IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Mr. Kamal Kant, Presiding Officer.

ID No. 211 /2005
Registered on:- 03.08.2005
Hem Prabh S/o Sh. Bali Ram, R/o Village Bhayarta, P.O. Chanahan, Teh. & Distt. Mandi (HP).

…….....Workman

Versus

1. Bhakra Beas management Board, Madhya Marg, Sector 19-B, Chandigarh through its Chairman.

2. The Chief Engineer, BSL Project Sundernagar Township, Distt. Mandi, (HP).

…..Respondents/Managements

AWARD

Passed on:- 18.07.2024

Central Government vide Notification No.L-23012/39 /2004-IR(CM-II), dated 07.07.2005, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

""Whether the demand of Shri Hem Prabh for reinstatement in the services of BBMB, Sunder Nagar is legal and justified? If so, to what relief the concerned workman is entitled and from which date?

1. The brief facts, related to the case are that the construction of Beas Sutluj Link Project{hereinafter called as BSL(P)} started in the year 1962 under Beas Control Board, which was constituted on 10.02.1961 with its headquarter at Sundernagar and this project was under the control of Centre Government, who had been constructing, maintaining, operating and administrating it through various Boards in different phases. After passing of Pb. Re-Organisation Act, 1966(hereinafter called "Re-Organisation Act") Beas Control Board was replaced by Beas Construction Board (hereinafter called BCB). The workman was employed by BCB on 04.02.1966. The workman who was employed in Beas Project(Unit-1) become the employee of Bhakra Beas Management Board(hereinafter called as BBMB) in pursuance of proviso (1) of Section 80(3) and Section 80(5) of Re-organisation Act and the workman become the employee of the Centre Government under the management of B.B.M.B. from 15.05.1976. The workman has completed 240 days in every calendar year and was not interrupted till his retrenchment. The employer made a bulk retrenchment of project employees in the year 1977 and 1978 and also in stages thereafter till 1984. The workman was also retrenched by the employer on 29.12.1977 on account of reduction in strength due to part completion of the BSL(P) and re-employment certificate was issued by the office of re-settlement B.S.L/B.B.M.B. Sundernagar for the re-employment of the retrenched workmen of B.S.L.(P)(BBMB) in accordance with provision of the Act. After the retrenchment of the workman, thousands of other persons were appointed secretly by employer, violating Section 25-G and Section 25-H of the I.D. Act, 1947. The employer is also doing unfair labour practices as defined in Section 2(R)A of the ID Act. Management has also violated the provisions of Rules 77 and 78 of Industrial Dispute(Central) Rule, 1957(hereinafter called "The Industrial Rules"). By filling vacant posts, the employer declared some posts as surplus and retrenched the employees working on those posts.

2. It is also maintained that the present workman and other workmen have filed a Civil Writ Petition No.403/1996, titled as Sant Ram and 87 others Vs. BBMB in the Hon'ble High Court of Shimla for their re-employment and in the said writ petition management filed reply dated 16.04.1996 by way of affidavit and admitted that retrenched workmen are employee of BBMB. The workmen have then withdrew the writ petition and filed civil suits for declaring them as a retrenched workmen of BBMB before the Sub-Judge, 1st Class, Sunder Nagar, Distt. Mandi(HP), on 21.01.1997 and later on those suits were decided on 05.07.2002 and all plaints were returned to the workmen to be filed before the competent authority on the basis of which the present proceedings were initiated after referring of the dispute of workman from the Ministry of Labour on 07.07.2005. Thereafter, management filed writ petition before the Hon'ble Punjab & Haryana High Court against the order of Ministry on 07.07.2005 and the same was dismissed on 07.05.2007

and Special Leave Petition filed bearing nos.16939-17007 of 2007 in Hon'ble Supreme Court of India by the management was also dismissed on 08.07.2014. It is therefore, prayed that the claim petition of the workman may kindly be allowed and workman be continued in the service of the management and be regularized and further be given all the consequential benefits.

3. Management filed written statement, alleging therein that workman is Ex-work charged employee of Beas Construction Board, which was constituted under Section 80(1) of the Re-organisation Act. The workman was retrenched after completion of the work of BCB in the year 1977. The workman was paid terminal benefits i.e. retrenchment compensation, gratuity, ex-gratia amount on account of his retrenchment from BCB as per provisions of ID Act. It is further maintained that BCB and present management are two distinct and separate entities. It is also maintained that construction of Beas Project was undertaken by the Punjab Govt. Irrigation Department prior to the re-organisation of the erstwhile State of Punjab on 01.01.1966. After re-organisation the work of BSL(P) was taken over by the Central Govt. on behalf of partner states of Punjab, Haryana and Rajasthan. The Central Govt. constituted BCB under Section 80(5) of the Re-organisation Act and further stipulated that any component of Beas Project in relation to which the construction has been completed be transferred by the Central Govt. to Bhakra Management Board(hereinafter called as BMB) constituted under Section 79(1) of the Re-organisation Act. It is further stated under Section 80(5) of the Re-organisation Act that BMB would be re-named as BBMB when any component of Beas Project was transferred under Section 80(6) of the Re-organisation Act. The workman was employed by the BCB. Thus, the workman never remained the employee of management. However, it is stated that 1093 work-charged and 12 contingent paid employees of Beas Project were sent on job order basis to RanjitSagar Dam, Punjab. They were taken over by the management under the benevolent policy of the Central Govt. as Central Govt. had given directions to BBMB to absorb these employees. The remaining work-charged employees were not entitled for the said benefit. Even work-charged employees of the BCB had filed a petition in the Hon'ble Supreme Court of India, titled as ***Jaswant Singh and another Vs. Union of India & Anr., 1979 SCC 440,***in which their claim for absorbing them in BBMB is not granted instead their retrenchment from BCB was upheld. Remaining averments have been denied and it is stated that the claim of the workman is hopelessly time barred and the workman has no legal enforceable right to claim employment in BBMB. It is prayed that claim be dismiss.

4. A replication was also filed by workman contravening the facts taken in written statement as reiterating the facts as stated in claim petition.

5. Parties were given opportunity to lead evidence.

6. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A and has been cross-examined by the learned law officer of management. He also tendered Ex.W-1 Identity Card, Ex.W-2 Discharge Certificate both documents are of one Sant Ram and not of Workman, Ex.W-3 Application for re-employment, Ex. W-4 documents filed in Civil Court alongwith orders.

7. The management has filed affidavit of N.M. Jain, Sub-Divisional Officer, Sub- Division BBMB Sunder Nagar, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the Ld. AR for workman.

8. While arguing the case, learned Law Officer for the management contended that initially Beas Control Board was constituted in the year 1960. BCB was constituted in the year 1966 and all the projects were transferred from Beas Control Board to BCB in the year 1966 thereafter as per Section 79 of the Punjab Re-organisation Act, BMB was constituted for administrative, maintenance and operation of various works as mentioned in Section 79 itself. Section 80(6) of the Punjab Re-organisation Act provides that BMB constituted under Section 79 of the Act shall be re-named as BBMB when any of the components of the Beas Project has been transferred under sub-section 5 and the BCB shall cease to exist when all the component of the Beas Project have been so transferred. All the projects under BCB were completed in the year 1984 and BCB ceased to exist in 1984. Present workman was employed as work charged employee 04.02.1966 and was retrenched on 29.12.1977. All similar work charged employees including the present workman was engaged by the BCB which ceased to exist in the year 1984 therefore, the workmen cannot be termed as the employees of the BBMB because there does not exist BCB which was his parent department. Moreover, the Hon'ble Supreme Court in the case titled as ***Jaswant Singh and another Vs. Union of India &Anr., 1979 SCC 440*** has held that work charged employees were bound by the settlement dated June 28, 1977 effected by the management and also by the award 2-C of the year 1971 before Sh. H.R. Sodhi, Presiding Officer, CGIT-Chandigarh between workman and employees of the Beas Construction Board, Sunder Nagar and published in the gazette on 15.06.1974 of the Govt. of India.

9. So far as the claim of the workman regarding re-employment after retrenchment on 29.12.1977 is concerned, workman was not entitled for re-instatement as in a case under reference no.2-C of 1971 decided by Sh. H.R. Sodhi, the then Presiding Officer, CGIT-Chandigarh, it was held that management in order to establish an industrial peace and to secure the work charge employees after completing the work can engage after completion of project at any time within 6 months for the maintenance of staff for project of any work if it is required to those work charged employees in order to seniority who have put 10 years of service. The relevant portion of para is reproduced as below:

It is accordingly, directed that at the time of completion of the Project or at any other time within six months thereof for the maintenance staff for the Project or any of its Works if it is required to be recruited or transferred from any department of the State Governments or of the Central Government, the offer shall first be made to the work-charged employees in order of their seniority who have put in 10 years' continuous service or more under the Board in that category or trade where the vacancy occurs subject to the medical fitness of such workmen. The scale of wages as applicable to the workmen will not, however, be disturbed to their prejudice nor their continuity of service affected."

10. Because the present workman had not completed 10 years of service so he is not entitled for re-employment. Learned representative for the management further contended that in this case workmen was retrenched on 29.12.1977 after receiving due retrenchment compensation etc. and now he is claiming re-employment under Section 25-H of the Act and his claim is hopelessly time barred as he has filed the present claim petition on 20.07.2005. To support this view he has placed reliance in the case titled as ***Chief Engineer RanjitSagar Dam &Anr. Vs. Sham Lal, AIR 2006, Supreme Court 2682,*** wherein in identical matters Court has not entertained writ petition due to inordinate delay. In the present case there is a delay of about 27 years. He also relied upon the case titled as ***Ram Chand Vs. The BBMB and another, CWP no.2787 of 2018, decided on 03.12.2018***(Annexure R-4) where the Hon'ble Himachal Pradesh High Court has held that dispute if any ought to be raised within a reasonable period as the ID Act does not prescribed time limit for referring such dispute. In the present case workman was engaged as Beldar in the year 1966 and was discharged on 29.12.1977 and he has sought re-employment after 39 years which was held to be highly time barred. Thus, he contended that claim of workman is time barred. Workman was discharged on 29.12.1977 and thereafter he filed present claim before the Labour Conciliation Officer.

11. While arguing the case, learned AR for the workman contended that in this case workman was discharged on 29.12.1977 due to reduction in strength and he was issued discharge certificate by Sub Divisional Officer, BBMB Sundernagar. He referred to Section 25-H of the ID Act which provides re-employment of retrenched workman. He further has drawn the attention of the Court towards the statement of the workman. He was required to be adjust in view of under Section 25-G of the Act by the management Discharge Certificate was issued by the Management. He was not given any employment. While arguing further, learned AR for the workman referred to Rule 77 and 78 of the Industrial Dispute Central Rule 1957(hereinafter called Industrial Rule). Rule 77 provides maintenance of seniority list of workman and it states that before any worker is retrenched the appellant-establishment is required to place on the notice board the seniority list of all the workmen who were to be retrenched but nothing has been done in this regard before retrenchment of the present worker. She also referred to Rule 78 which provides that as and when any vacancy incurred then retrenched workmen were required to be given registered notice but nothing was done by the management. Moreover, question of limitation does not arise as no limitation period has been prescribed under the Act for seeking relief under Clause (d) of Sub-Section (1) of Section 10 of the ID Act. Learned AR for the workman further contended that even reference made by the Government dated 07.07.2005 was challenged by the management in the Hon'ble Punjab & Haryana High Court vide Writ Petition No.3100 of 2006 and their writ petition was dismissed by the Hon'ble High Court on 07.05.2007. Even SLP filed against the order dated 07.05.2007 was upheld by the Hon'ble Supreme Court in SLP No.16979/2007 dated 08.07.2014.

12. I have given due consideration to the arguments advanced by the learned AR for the workman and also for the management.

13. The management relied upon mainly in this case on the case titled as ***Jaswant Singh and another(supra),*** which is very material for decision of this case. The said judgment deals with two types of petitioners. First type of petitioners were employed by the BCB on purely temporary basis and they had also given written undertaking confirming the term of their appointment. The BCB appointed the first type of petitioners on ad hoc basis with a clear understanding that they will have no right to be retained in service after the completion of the Beas Project. They are Engineers, Section Officer, Accounts Clerk, Teacher etc. and they have claimed their parity with other employees who belonged to the services of the Punjab, Haryana and Rajasthan Governments and who were serving on deputation in connection with the works of the BhakraNangal Scheme.

14. In respect of these employees, it was held as follow:-

"To sum up, we are of the opinion that the petitioners are employees of the Central Government. Their conditions of service will be primarily governed by the terms of their appointment but, if they are entitled to the benefit of any of the rules of the Central Civil Services (Temporary Service) Rules 1965, they may make representations in that behalf to the appropriate authorities. It is, however, not possible for this Court to grant to the petitioners any of the reliefs claimed by them as arising out of the provisions of the aforesaid rules, including the relief by way of a declaration that they shall be deemed to be in quasi-permanent service under rule 3. We are further of the opinion that the petitioners have no right to be transferred to the services of the Bhakra Management Board, now re-named as the Bhakra Beas Management Board. Lastly, the proposed retrenchment of the petitioners does not offend against the guarantee of equality contained in articles 14 and 16 of the Constitution, since the petitioners and the Deputationists belong to two different and distinct classes."

15. As regards, second type of employees i.e. work charged employees the judgment deals in Para 41, 42, 43, 44, 45, 46 and 47 which read as follow:-

"41. A work-charged establishment broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the work.

42. The entire strength of labour employed for the purposes of the Beas Project was work-charged. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. They do not get any relief under the Payment of Gratuity Act nor do they receive any retrenchment benefits or any benefits under the Employees State Insurance Schemes.

43. But though the work-charged employees are denied these benefits, they are industrial workers and are entitled to the benefits of the pro- visions contained in the Industrial Disputes Act. Their rights flow from that special enactment under which even contracts of employment are open to adjustment9 and modification. The work-charged employees, therefore, are in a better position than temporary servant like the other petitioners who are liable to be thrown out of employment without any kind of compensatory benefits.

44. The record of Writ Petition No. 4505 of 1978 shows that offers of alternative employment were made to the work- charged employees and many of them have accepted those offers. The rule of 'last come, first go' has also been consistently adopted while retrenching the work-charged employees. In fact the work-charged employees possess a unique right as industrial employees since, by reason of section 25J(1) of the Industrial Disputes Act, the provisions of Chapter VA, "Lay-off and Retrenchment", have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing orders) Act, 1946.

45. There were in all about 36000 work-charged employees working on the Beas Project. Out of them, about 26000 have already accepted retrenchment compensation under the settlement arrived between the workmen and the management in the conciliation proceedings held by the Regional Labour Commissioner (Central), New Delhi, under section 12 of the Industrial Disputes Act, 1947. All the 12 unions of which the work-charged employees are members were parties to the said conciliation proceedings. By reason of section 18(3)(d) of the Industrial Disputes Act, a settlement arrived at in the course of a conciliation proceeding is binding on all persons who were employed in the establishment to which the dispute relates, whether they were employed on the date of the dispute or subsequently. In Ramnagar Cane and Sugar Co. Ltd. v. JatinChakravorty and ors., it was held by this Court that it is not even necessary, in order to bind the work men to the settlement arrived at before the conciliator, to show that they belonged to the union which took part in the conciliation proceedings, since the policy underlying section 18 of the Act is to give an extended operation to such settlements. In the instant case, all the 12 unions which represented the workmen on the work-charged establishment were parties to the conciliation proceedings. The settlement will therefore bind all the work-charged employees.

46. Apart from the settlement in the conciliation proceedings, an award was made by the Industrial Tribunal, Central, Chandigarh, in Reference No. 2-C of 1971, in an industrial dispute between the work-charged employees of the Beas-Sutlej Link Project, Sundernagar, with which we are concerned, and the management. Under that award, as stated in the award itself, a consent formula was evolved to which the workmen "virtually agreed". The benefits which flow- to the work- charged employees under the aforesaid award dated May 15, 1974, have been accepted by almost all the work- charged employees, involving a burden of about Rs. 3 crores on the employers.

47. Since the work-charged employees are bound by the settlement dated June 28, 1977 effected between them and the management in the conciliation proceedings and since they are also bound by and have accepted benefits under the consent award dated May 15, 1974 they are not entitled to any rights apart from those flowing from the aforesaid settlement and the Award. SLP No.1246 of 1979 which is filed to challenge the Award and C.M.P. No.2077 of 1979 which is filed for condonation of the delay of over four and half years caused in filing the SLP shall have to be dismissed."

16. Thus, from the above observation of Supreme Court it is clear that work charged employees are engaged on a temporary basis and their appointments are made for the specified work and their service comes to an end on the completion of work for the sole purpose of which they are employed.

17. Para 43 provides that work charged employees are industrial worker and entitled to the benefit of the provisions contained under the Industrial Disputes Act. Their rights flow from that special enactment under which

even contracts of employment are open to adjustment and modification. Para 45 as reproduced above further provides that in the conciliation proceeding it has been held that there were about 36000 work charged employees working on Beas Project out of them 26000 has already accepted retrenchment compensation under the settlement arrived between the workmen and the management in the conciliation proceedings held by the Regional Labour Commissioner(Central), New Delhi under Section 12 of the ID Act. The said settlement is binding on all the work charge employees who are working in the establishment to which the dispute relates. In para 46 it is further stated that apart from the settlement in the conciliation proceeding an award was made by the CGIT Chandigarh in reference no.2-C in an industrial dispute between the work charged employee of the Beas Sutlej Project, Sundernagar with which we are concerned and the management. A consent formula was evolved to which the workmen virtually agreed. In the last para 47 itself specifically stated that work charged employees are bound by the settlement and award May 15, 1974 and they were entitled to rights those flowing from the settlement and award.

18. So far as the settlement executed between the work charged employees and management through unions, the same has not been produced by the management despite opportunity was given to file the same. Thus, adverse interference can be drawn against them. To support this view, reliance can be placed to the judgment of Hon'ble Punjab & Haryana High Court in case held as***2001(3) RSJ 382 Ambika Parashad Versus Punjab Urban Planning and Development Authority Chandigarh and Another*** **wherein it has been** held **"that respondent has not produced record in the Labour Court to prove that Workman has not completed 240 days of service though application was submitted by the Workman for production of record held that a person in possession of the best evidence has to produce the same, otherwise adverse inference can be drawn against the said party".** In this case also as per order dated 01.05.2024 of this Tribunal. Respondent were asked to produce the settlement arrived between the 12 union of the work charged employee and management under Section 12 of ID Act before the Regional Labour Commissioner, New Delhi and all the work charged employee were bound by the said settlement. However, despite of availing 2-3 opportunities i.e. 20.05.2024, 20.06.2024 and 09.07.2024 the said policy was not produced and as such adverse inference can be drawn against the management in view of the above law.

19. As regards award passed by Central Govt. Industrial Tribunal, Chandigarh, the relevant claim of the work charged employees was regarding their regularization services and the finding given by the Tribunal is as follow:-

"Regulation of Services of the workcharged employees.

It is an un-disputed fact that the entire strength of labour as employed in the Project is workcharged. The institution of workcharged establishment is not only necessary but sometime unavoidable. These workmen are engaged on temporary basis and their services are utilized for the execution of a specified work for which they may be suited. From the very nature of employment the services of such workman automatically come to an end on the completion of the work. A workcharged employee does not get any relief under the Payment of Gratuity Act nor is he benefitted by the employees state Insurance Scheme. He does not indeed enjoy any retiral benefits. Before partition of the country in 1947 it was not usual to have project, construction of which required a number of years to complete but after constituting ourselves into a democratic Republic and the Government having taken in hand five year plans for development of the country there are various schemes involving the construction of works for a period extending over several years as is the case of the instant Project. It commenced in 1962 and more than 12 years having passed the completion might take another few years. In such situation it seems reasonable and fair that a workman who has, like a regular employee, spent the part of his life ranging from 5-10 years upto 20 year, should not be thrown on the road and must be assured some benefits as are available to regular staff. The other aspect of the matter is that the employer could not compelled to retain workcharged employees after the work for which the latter had been engaged is completed, as after all, he was employed before a particular job and the employer, be it the Government or any of its public undertakings, cannot taken upon itself the responsibility of that workman for all time to come. It can be well argued that such a workmen should feel happy and content that instead of remaining un-employed be got employment for a long time.

To assure Industrial peace and economic justice to such class of workmen some balance has in my opinion to be stuck between the two extremes. It is the duty of the State under the Directive Principles enunciated in part 4 of the constitution to secure and protect that social order in which justice, social and economic could be had by all institutions of national life. I fell that it is equally the duty of an adjudicator of industrial disputes charged with the duty of administering social justice to be guided by the fundamentals contained in this chapter though he has to bear In mind the limits of the economic capacity of the employer and Endeavour must have ever be made to secure work for every citizen do in our present economy. It is not possible to immediately achieve that object. The workman employed by the respondent management are drawn from different states out of which I am informed about 8/10 thousands are from Punjab about 22000 from Himachal Pradesh and the remaining from the states of Rajasthan and Haryana. Some of the workmen are from U.P and Bihar and a handful from Kerala. The board hasby and large been consistently following the Punjab pattern in the matter of wage structure, revision thereof from time to time and grant of dearness allowance. It is only with regard to

categories not appearing in the common Schedule of Rates prepared by the erstwhile United State of Punjab that the board took its independence decisions on the recommendations of its own standing committee.Even Himachal Pradesh Government generally followed the Punjab policy.The state government of Punjab in its wisdom, and I should say rightly has declared that the services of work charged employees in building and roads branch who had worked for 10 years or more would stand regularized in the sense that the workmen would be treated at par with those in the regular service of the state government.The benefit of this announcement was afterwards extended to the employees of its irrigation branch as well at the workman who held from Punjab continue to stay in their parents state the services of those who had put in 10 years or more would have been regularized the respondent management too in pursuance of its policy to follow the Punjab pattern might have regularized the services of at least of those workmen who had come from Punjab but any such course would have created awkward situation as the workmen from other States could not be discriminated in this respect.Moreover financial implications and other complications are involved.

In such circumstances stated aboveI would have directed that the services of those of the workman who have been continuously employed for more than 10 years should be regularized. But the other problems arising from such a direction including financial impact on the employer cannot be lost sight of The Central Government through the board is only managing on behalf of the state of Punjab, Rajasthan Haryana and Himachal Pradesh who are partners in the venture.Several aspects of the question were discussed with the workmen and the management in the course of arguments and a formula evolved to which the workman virtually agreed and I feel that such a solution as stated hereunder is quite just to all the parties provided it is work out, honestly stated. No doubt,what is referred to me is the matter of regularization of the services of work charge employees, but the directions that I am issuing in my opinion, amount to only granting lesser relief than claimed by the workmen. The management can also have no grievance if it wants industrial peace and is anxious to secure employment to the work-charged employees after the completion of the work. It is accordingly, directed that at the time of completion of the Project or at any other time within six months thereof for the maintenance staff for the Project or any of its Works if it is required to be recruited or transferred from any department of the State Governments or of the Central Government, the offer shall first be made to the work-charged employees in order of their seniority who have put in 10 years' continuous service or more under the Board in that category or trade where the vacancy occurs subject to the medical fitness of such workmen. The scale of wages as applicable to the workmen will not, however, be disturbed to their prejudice nor their continuity of service affected. The workmen have expressed an apprehension that near the completion of the Project trades of some of them might be changed so that it could be said that a suitable workman needed for a particular job was not available and an outsider was therefore necessary to be employed. To protect the workmen against this possible denial of their rights it is further directed that category or trade of no workman shall be changed within one year preceding the completion of the Project without his consent in writing and that if any such change without consent is made it will have no consequence inasmuch as such a workman will be entitled to the job of his earlier trade provided the vacancy relates to that trade. As regards those of the workmen who cannot be absorbed on the regular maintenance staff. I have no reason to doubt that the State Government who are beneficiaries under the Project and also the Central Government will make every reasonable effort to get them re-employed at any other Project or work whether in any one of these States or in any other part of the country where there is a need for workmen of those trades."

20. A perusal of aforesaid findings made it ample clear that the order has been passed by the then learned Presiding Officer, CGIT, Chandigarh to maintain industrial peace and to secure employment to the work charged employees after the completion of the work and it was also held by the learned CGIT thatState Govt. who are beneficiary under the project and the Central Govt. will make every reasonable effort to get those workmen re-employed at any other project or work whether in any one of these States or in any other part of the country where there is a need of workmen of those trades.

21. Admittedly, in this case, no effort was made by the respondent to give any employment after the retrenchment of the workmen and even there is non-compliance of Rules 77 and 78 of Industrial Rules. The same are reproduced below:

77. Maintenance of seniority list of workmen. *-The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated to be arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.*

78. Re-employment of retrenched workmen. - *(1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the*

premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies by registered post to every one of all the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time thereafter:

Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the senior-most retrenched workmen in the list referred to in rule 77 the number of such senior-most workmen being double the number of such vacancies:

Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen:

Provided also that if a retrenched workman, without sufficient cause being shown in writing to the employer, does not offer himself for re-employment on the date or dates specified in the intimation sent to him by the employer under this sub-rule, the employer may not intimate to him the vacancies that may be filled on any subsequent occasion.]

(2) Immediately after complying with the provisions of sub-rule (1), the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under that sub-rule:

Provided that the provisions of this sub-rule need not be complied with by the employer in any case where an intimation is sent to every one of the workmen mentioned in the list prepared under rule 77.

22. However, the present work charged employee and other work-charged employees have been retrenched long back and even at the stage it is impossible to re-employe them. However, certainly in respect of workcharged employees present Respondent was directed by the Hon'ble Supreme Court in Judgment of Jaswant Singh (Supra) to give benefits in terms of settlement and award dated 15.05.1974. The main purpose of Hon'ble Supreme Court and Ld. CGIT Chandigarh was to rehabilitate to some extent the work charged employees and restore peace and congenial atmosphere that is why Ld. CGIT Chandigarh had given directions to all state to re-employe them. Thus, it does not lie in the mouth of present Respondent that no relief can be granted against present Respondent as petitioners are not their employees.

A. So far as this argument of Ld. AR of the management that those work charged employees only who have completed 10 years of service were required to be adjusted within 6 months from their retrenchment is concerned, the same is devoid of merit as no effort was made by the management to adjust the work charged employees. Moreover, no documentary evidence has been produced that any effort was made to adjust the workman after his retrenchment. Further, Ld. CGIT Chandigarh in its last lines concluded as under:-

"As regards those of the workmen who cannot be absorbed on the regular maintenance staff. I have no reason to doubt that the State Government who are beneficiaries under the Project and also the Central Government will make every reasonable effort to get them re-employed at any other Project or work whether in any one of these states or in any other part of the country where there is a need of workmen of those trades"

Nothing has come on record that above directions were complied with.

23. Moreover, in the absence of production of settlement between work charged employees and management, it cannot be interfered what were the terms and conditions in the said settlement. Further, CGIT Chandigarh has fixed ten years time and accrual of vacancy within six months keeping in view the facts and circumstances of the case and has evolved his own formula to bring peace and harmony between work charged employees and management but it cannot be said to be a universal policy in the absence of production of settlement between work charged employees and management. However, no effort was made to adjust the petitioners in view of order of CGIT.

24. As regard, this contention of learned AR of management that petitioners were not the employees of the BBMB but were the employees of BCB, the same is devoid of merit as Discharge certificate was issued by the BBMB. Moreover, as per respondent Beas Control Board was constituted in the year 1960. BCB was constituted in the year 1966 and all the projects were transferred from Beas Control Board to BCB in the year 1966 thereafter as per Section 79 of the Punjab Re-organisation Act, BMB was constituted for administrative, maintenance and operation of various works as mentioned in Section 79 itself. Section 80(6) of the Punjab Re-organisation Act provides that BMB constituted under Section 79 of the Act shall be re-named as BBMB when any of the components of the Beas Project has been transferred under sub-section 5 and the BCB shall cease to exist when all the component of the Beas Project have been so transferred. All the projects under BCB were completed in the year 1984 and BCB ceased to exist in 1984. When all work of BCB stands transferred to BBMB so it cannot be said that BBMB is separate identity than BCB. Rather BCB has merged in BBMB. Moreover, Hon'ble Supreme Court in Jaswant Singh case(supra) in respect of work charged employees has no where stated that relief can be sought by work charged employees only against the BCB. So contention of Ld. AR of the management that BCB and BBMB are two separate entities is devoid of merit.

25. So far this argument of Law Officer for the respondent that the case is hopelessly time barred is concerned, the same is again devoid of merits as there was non-compliance of Rule 77 and 78 of Industrial Rules which has been reproduced above. Moreover, there is no limitation period prescribed for filing a reference. Moreover, reference was received in the year 2005 and thereafter, several rounds of litigations have taken place. So far as case laws on the point of limitation the same are not attracted in the present case as there was no compliance of Judgment of Jaswant Singh case (Supra).

26. However, it is added that workman was allowed terminal benefits as admitted by him. Moreover, it is also not case of the petitioner that there is breach of Section 25 F of the Act.

27. Further, there was non-compliance of Jaswant Singh Case (Supra), Reference No.2C of 1971 and Rule 77 & 78 of Industrial Rules and in this case it would be highly difficult to re-employe the workman. The only remedy left is to compensate the workman in term of money.

28. Keeping in view the fact and circumstances of the present case and other connected case of similar nature the following scheme of compensation is deemed fit by this Tribunal:

i. Work charged employee who has completed 5 years of service shall be entitled for Rs.50,000/- along with interest @9% per annum as compensation from the date of moving of application till the realization of amount.

ii. Work charged employee who has completed less than 5 years but more than 1 year would be entitled Rs.25,000/- along with interest @9% per annum from the date of moving of application till the realization of amount.

iii. Those employees who have not completed 1 year will not be entitled for any compensation in the present case.

The present workman has claimed that he has worked from 4.2.1966 to 29.12.1977 which fact is not denied by the management in its written statement. The workman was also subjected to cross-examination but this fact cannot be rebutted. Thus, it is held that workman worked from 04.02.1966 to 29.12.1977(more than 5 years. He is entitled of Rs.50,000/- along with interest @9% per annum from the date of moving the application till its realization.

29. The reference is answered accordingly and stands disposed of.

30. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

KAMAL KANT**,** Presiding Officer

नई दिल्ली, 26 सितम्बर, 2024

का.आ. 1869.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. बी. एम. बी. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण-** सह **- श्रम न्यायालय नंबर** II चंडीगढ़ के पंचाट **(संदर्भ संख्या 149/2005)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **29/08/2024** को प्राप्त हुआ था।

[फा. सं. एल–23012/49/2004-आई. आर. (सी.एम- II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 26th September, 2024

S.O. 1869.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No.149/2005*)*** of **the Central Government Industrial Tribunal-cum-Labour Court NO 2, Chandigarh** as shown in the Annexure, in the industrial dispute between the Management of **BBMB** and their workmen, received by the Central Government on ***29/08/2024***

[F. No. L-23012/49/2004– IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Mr. Kamal Kant, Presiding Officer.

ID No. 149 /2005
Registered on:- 25.07.2005
Shyam Lal S/o Sh. Bhuru Ram, C/o Shri Hem Prabh S/o Sh. Bali Ram, R/o Village Bhayarta, P.O. Chanahan, Teh. & Distt. Mandi (HP).

……....Workman

Versus

1. Bhakra Beas management Board, Madhya Marg, Sector 19-B, Chandigarh through its Chairman.
2. The Chief Engineer, BSL Project Sundernagar Township, Distt. Mandi, (HP).

…..Respondents/Managements

AWARD

Passed on:- 15.07.2024

Central Government vide Notification No.L-23012/49/2004-IR(CM-II), dated 07.07.2005, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the demand of Shri Shyam Lal for reinstatement in the services of BBMB, Sunder Nagar is legal and justified? If so, to what relief the concerned workman is entitled and from which date?

1. The brief facts, related to the case are that the construction of Beas Sutluj Link Project{hereinafter called as BSL(P)} started in the year 1962 under Beas Control Board, which was constituted on 10.02.1961 with its headquarter at Sundernagar and this project was under the control of Centre Government, who had been constructing, maintaining, operating and administrating it through various Boards in different phases. After passing of Pb. Re-Organisation Act, 1966(hereinafter called "Re-Organisation Act") Beas Control Board was replaced by Beas Construction Board (hereainfter called "BCB"). The workman was employed by BCB on 09.06.1972. The workman who was employed in Beas Project(Unit-1) become the employee of Bhakra Beas Management Board(hereinafter called as BBMB) in pursuance of proviso (1) of Section 80(3) and Section 80(5) of Re-organisation Act and the workman become the employee of the Centre Government under the management of B.B.M.B. from 15.05.1976. The workman has completed 240 days in every calendar year and was not interrupted till his retrenchment. The employer made a bulk retrenchment of project employees in the year 1977 and 1978 and also in stages thereafter till 1984. The workman was also retrenched by the employer on 18.10.1978 on account of reduction in strength due to part completion of the BSL(P) and re-employment certificate was issued by the office of re-settlement B.S.L/B.B.M.B. Sundernagar for the re-employment of the retrenched workmen of B.S.L.(P)(BBMB) in accordance with provision of the Act. After the retrenchment of the workman, thousands of other persons were appointed secretly by employer, violating Section 25-G and Section 25-H of the I.D. Act, 1947. The employer is also doing unfair labour practices as defined in Section 2(R)A of the ID Act. Management has also violated the provisions of Rules 77 and 78 of Industrial Dispute(Central) Rule, 1957(hereinafter called "The Industrial Rules"). By filling vacant posts, the employer declared some posts as surplus and retrenched the employees working on those posts.

2. It is also maintained that the present workman and other workmen have filed a Civil Writ Petition No.403/1996, titled as Sant Ram and 87 others Vs. BBMB in the Hon'ble High Court of Shimla for their re-employment and in the said writ petition management filed reply dated 16.04.1996 by way of affidavit and admitted that retrenched workmen are employee of BBMB. The workmen have then withdrew the writ petition and filed civil suits for declaring them as a retrenched workmen of BBMB before the Sub-Judge, 1st Class, Sunder Nagar, Distt. Mandi(HP), on 21.01.1997 and later on those suits were decided on 05.07.2002 and all plaints were returned to the workmen to be filed before the competent authority on the basis of which the present proceedings were initiated after referring of the dispute of workman from the Ministry of Labour on 07.07.2005. Thereafter, management filed writ petition before the Hon'ble Punjab & Haryana High Court against the order of Ministry on 07.07.2005 and the same was dismissed on 07.05.2007 and Special Leave Petition filed bearing nos.16939-17007 of 2007 in Hon'ble Supreme Court of India by the management was also dismissed on 08.07.2014. It is therefore, prayed that the claim petition of the workman may kindly be allowed and workman be continued in the service of the management and be regularized and further be given all the consequential benefits.

3. Management filed written statement, alleging therein that workman is Ex-work charged employee of Beas Construction Board, which was constituted under Section 80(1) of the Re-organisation Act. The workman was retrenched after completion of the work of BCB in the year 1978. The workman was paid terminal benefits i.e.

retrenchment compensation, gratuity, ex-gratia amount on account of his retrenchment from BCB as per provisions of ID Act. It is further maintained that BCB and present management are two distinct and separate entities. It is also maintained that construction of Beas Project was undertaken by the Punjab Govt. Irrigation Department prior to the re-organisation of the erstwhile State of Punjab on 01.01.1966. After re-organisation the work of BSL(P) was taken over by the Central Govt. on behalf of partner states of Punjab, Haryana and Rajasthan. The Central Govt. constituted BCB under Section 80(5) of the Re-organisation Act and further stipulated that any component of Beas Project in relation to which the construction has been completed be transferred by the Central Govt. to Bhakra Management Board(hereinafter called as BMB) constituted under Section 79(1) of the Re-organisation Act. It is further stated under Section 80(5) of the Re-organisation Act that BMB would be re-named as BBMB when any component of Beas Project was transferred under Section 80(6) of the Re-organisation Act. The workman was employed by the BCB. Thus, the workman never remained the employee of management. However, it is stated that 1093 work-charged and 12 contingent paid employees of Beas Project were sent on job order basis to Ranjit Sagar Dam, Punjab. They were taken over by the management under the benevolent policy of the Central Govt. as Central Govt. had given directions to BBMB to absorb these employees. The remaining work-charged employees were not entitled for the said benefit. Even work-charged employees of the BCB had filed a petition in the Hon'ble Supreme Court of India, titled as ***Jaswant Singh and another Vs. Union of India & Anr., 1979 SCC 440,*** in which their claim for absorbing them in BBMB is not granted instead their retrenchment from BCB was upheld. Remaining averments have been denied and it is stated that the claim of the workman is hopelessly time barred and the workman has no legal enforceable right to claim employment in BBMB. It is prayed that claim be dismiss.

4. A replication was also filed by workman contravening the facts taken in written statement as reiterating the facts as stated in claim petition.

5. Parties were given opportunity to lead evidence.

6. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A and has been cross-examined by the learned law officer of management. He also tendered document Ex. W-1 Discharge Certificate, Ex.W-2 Identity Card.

7. The management has filed affidavit of N.M. Jain, Sub-Divisional Officer, Sub- Division BBMB Sunder Nagar, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned counsel of workman.

8. While arguing the case, learned Law Officer for the management contended that initially Beas Control Board was constituted in the year 1960. BCB was constituted in the year 1966 and all the projects were transferred from Beas Control Board to BCB in the year 1966 thereafter as per Section 79 of the Punjab Re-organisation Act, BMB was constituted for administrative, maintenance and operation of various works as mentioned in Section 79 itself. Section 80(6) of the Punjab Re-organisation Act provides that BMB constituted under Section 79 of the Act shall be re-named as BBMB when any of the components of the Beas Project has been transferred under sub-section 5 and the BCB shall cease to exist when all the component of the Beas Project have been so transferred. All the projects under BCB were completed in the year 1984 and BCB ceased to exist in 1984. Present workman was employed as work charged employee 09.06.1972 and was retrenched on 18.10.1978. All similar work charged employees including the present workman was engaged by the BCB which ceased to exist in the year 1984 therefore, the workmen cannot be termed as the employees of the BBMB because there does not exist BCB which was his parent department. Moreover, the Hon'ble Supreme Court in the case titled as ***Jaswant Singh and another Vs. Union of India & Anr., 1979 SCC 440*** has held that work charged employees were bound by the settlement dated June 28, 1977 effected by the management and also by the award 2-C of the year 1971 before Sh. H.R. Sodhi, Presiding Officer, CGIT-Chandigarh between workman and employees of the Beas Construction Board, Sunder Nagar and published in the gazette on 15.06.1974 of the Govt. of India.

9. So far as the claim of the workman regarding re-employment after retrenchment on 18.10.1978 is concerned, workman was not entitled for re-instatement as in a case under reference no.2-C of 1971 decided by Sh. H.R. Sodhi, the then Presiding Officer, CGIT-Chandigarh, it was held that management in order to establish an industrial peace and to secure the work charge employees after completing the work can engage after completion of project at any time within 6 months for the maintenance of staff for project of any work if it is required to those work charged employees in order to seniority who have put 10 years of service. The relevant portion of para is reproduced as below:

> ***"It is accordingly, directed that at the time of completion of the Project or at any other time within six months thereof for the maintenance staff for the Project or any of its Works if it is required to be recruited or transferred from any department of the State Governments or of the Central Government, the offer shall first be made to the work-charged employees in order of their seniority who have put in 10 years' continuous service or more under the Board in that category or trade where the vacancy occurs subject to the medical fitness of such workmen. The scale of wages as applicable to the workmen will not, however, be disturbed to their prejudice nor their continuity of service affected."***

10. Because the present workman had not completed 10 years of service so he is not entitled for re-employment. Learned representative for the management further contended that in this case workman was retrenched on

18.10.1978 after receiving due retrenchment compensation etc. and now he is claiming re-employment under Section 25-H of the Act and his claim is hopelessly time barred as he has filed the present claim petition on 20.07.2005. To support this view he has placed reliance in the case titled as ***Chief Engineer Ranjit Sagar Dam & Anr. Vs. Sham Lal, AIR 2006, Supreme Court 2682,*** wherein in identical matters Court has not entertained writ petition due to inordinate delay. In the present case there is a delay of about 27 years. He also relied upon the case titled as ***Ram Chand Vs. The BBMB and another, CWP no.2787 of 2018, decided on 03.12.2018***(Annexure R-4) where the Hon'ble Himachal Pradesh High Court has held that dispute if any ought to be raised within a reasonable period as the ID Act does not prescribed time limit for referring such dispute. In the present case workman was engaged as Beldar in the year 1972 and was discharged on 18.10.1978 and he has sought re-employment after 33 years which was held to be highly time barred. Thus, he contended that claim of workman is time barred. Workman was discharged on 18.10.1978 and thereafter he filed present claim before the Labour Conciliation Officer on 30.11.2005.

11. While arguing the case, learned AR for the workman contended that in this case workman was discharged on 18.10.1978 due to reduction in strength and he was issued discharge certificate by Sub Divisional Officer, BBMB Sundernagar. He referred to Section 25-H of the ID Act which provides re-employment of retrenched workman. He further has drawn the attention of the Court towards the statement of the workman. He was required to be adjust in view of under Section 25-G of the Act by the management Discharge Certificate was issued by the Management. He was not given any employment. While arguing further, learned AR for the workman referred to Rule 77 and 78 of the Industrial Dispute Central Rule 1957(hereinafter called Industrial Rule). Rule 77 provides maintenance of seniority list of workman and it states that before any worker is retrenched the appellant-establishment is required to place on the notice board the seniority list of all the workmen who were to be retrenched but nothing has been done in this regard before retrenchment of the present worker. She also referred to Rule 78 which provides that as and when any vacancy incurred then retrenched workmen were required to be given registered notice but nothing was done by the management. Moreover, question of limitation does not arise as no limitation period has been prescribed under the Act for seeking relief under Clause (d) of Sub-Section (1) of Section 10 of the ID Act. Learned AR for the workman further contended that even reference made by the Government dated 07.07.2005 was challenged by the management in the Hon'ble Punjab & Haryana High Court vide Writ Petition No.3100 of 2006 and their writ petition was dismissed by the Hon'ble High Court on 07.05.2007. Even SLP filed against the order dated 07.05.2007 was upheld by the Hon'ble Supreme Court in SLP No.16979/2007 dated 08.07.2014.

12. I have given due consideration to the arguments advanced by the learned AR for the workman and also for the management.

13. The management relied upon mainly in this case on the case titled as ***Jaswant Singh and another(supra),*** which is very material for decision of this case. The said judgment deals with two types of petitioners. First type of petitioners were employed by the BCB on purely temporary basis and they had also given written undertaking confirming the term of their appointment. The BCB appointed the first type of petitioners on ad hoc basis with a clear understanding that they will have no right to be retained in service after the completion of the Beas Project. They are Engineers, Section Officer, Accounts Clerk, Teacher etc. and they have claimed their parity with other employees who belonged to the services of the Punjab, Haryana and Rajasthan Governments and who were serving on deputation in connection with the works of the BhakraNangal Scheme.

14. In respect of these employees, it was held as follow:-

> ***"To sum up, we are of the opinion that the petitioners are employees of the Central Government. Their conditions of service will be primarily governed by the terms of their appointment but, if they are entitled to the benefit of any of the rules of the Central Civil Services (Temporary Service) Rules 1965, they may make representations in that behalf to the appropriate authorities. It is, however, not possible for this Court to grant to the petitioners any of the reliefs claimed by them as arising out of the provisions of the aforesaid rules, including the relief by way of a declaration that they shall be deemed to be in quasi-permanent service under rule 3. We are further of the opinion that the petitioners have no right to be transferred to the services of the Bhakra Management Board, now re-named as the Bhakra Beas Management Board. Lastly, the proposed retrenchment of the petitioners does not offend against the guarantee of equality contained in articles 14 and 16 of the Constitution, since the petitioners and the Deputationists belong to two different and distinct classes."***

15. As regards, second type of employees i.e. work charged employees the judgment deals in Para 41, 42, 43, 44, 45, 46 and 47 which read as follow:-

> ***"41. A work-charged establishment broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the work.***
>
> ***42. The entire strength of labour employed for the purposes of the Beas Project was work-charged. The work-charged employees are engaged on a temporary basis and their appointments are made for the***

execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. They do not get any relief under the Payment of Gratuity Act nor do they receive any retrenchment benefits or any benefits under the Employees State Insurance Schemes.

43. But though the work-charged employees are denied these benefits, they are industrial workers and are entitled to the benefits of the pro- visions contained in the Industrial Disputes Act. Their rights flow from that special enactment under which even contracts of employment are open to adjustment9 and modification. The work-charged employees, therefore, are in a better position than temporary servant like the other petitioners who are liable to be thrown out of employment without any kind of compensatory benefits.

44. The record of Writ Petition No. 4505 of 1978 shows that offers of alternative employment were made to the work- charged employees and many of them have accepted those offers. The rule of 'last come, first go' has also been consistently adopted while retrenching the work-charged employees. In fact the work-charged employees possess a unique right as industrial employees since, by reason of section 25J(1) of the Industrial Disputes Act, the provisions of Chapter VA, "Lay-off and Retrenchment", have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing orders) Act, 1946.

45. There were in all about 36000 work-charged employees working on the Beas Project. Out of them, about 26000 have already accepted retrenchment compensation under the settlement arrived between the workmen and the management in the conciliation proceedings held by the Regional Labour Commissioner (Central), New Delhi, under section 12 of the Industrial Disputes Act, 1947. All the 12 unions of which the work-charged employees are members were parties to the said conciliation proceedings. By reason of section 18(3)(d) of the Industrial Disputes Act, a settlement arrived at in the course of a conciliation proceeding is binding on all persons who were employed in the establishment to which the dispute relates, whether they were employed on the date of the dispute or subsequently. In Ramnagar Cane and Sugar Co. Ltd. v. JatinChakravorty and ors., it was held by this Court that it is not even necessary, in order to bind the work men to the settlement arrived at before the conciliator, to show that they belonged to the union which took part in the conciliation proceedings, since the policy underlying section 18 of the Act is to give an extended operation to such settlements. In the instant case, all the 12 unions which represented the workmen on the work-charged establishment were parties to the conciliation proceedings. The settlement will therefore bind all the work-charged employees.

46. Apart from the settlement in the conciliation proceedings, an award was made by the Industrial Tribunal, Central, Chandigarh, in Reference No. 2-C of 1971, in an industrial dispute between the work-charged employees of the Beas-Sutlej Link Project, Sundernagar, with which we are concerned, and the management. Under that award, as stated in the award itself, a consent formula was evolved to which the workmen "virtually agreed". The benefits which flow- to the work- charged employees under the aforesaid award dated May 15, 1974, have been accepted by almost all the work- charged employees, involving a burden of about Rs. 3 crores on the employers.

47. Since the work-charged employees are bound by the settlement dated June 28, 1977 effected between them and the management in the conciliation proceedings and since they are also bound by and have accepted benefits under the consent award dated May 15, 1974 they are not entitled to any rights apart from those flowing from the aforesaid settlement and the Award. SLP No.1246 of 1979 which is filed to challenge the Award and C.M.P. No.2077 of 1979 which is filed for condonation of the delay of over four and half years caused in filing the SLP shall have to be dismissed."

16. Thus, from the above observation of Supreme Court it is clear that work charged employees are engaged on a temporary basis and their appointments are made for the specified work and their service comes to an end on the completion of work for the sole purpose of which they are employed.

17. Para 43 provides that work charged employees are industrial worker and entitled to the benefit of the provisions contained under the Industrial Disputes Act. Their rights flow from that special enactment under which even contracts of employment are open to adjustment and modification. Para 45 as reproduced above further provides that in the conciliation proceeding it has been held that there were about 36000 work charged employees working on Beas Project out of them 26000 has already accepted retrenchment compensation under the settlement arrived between the workmen and the management in the conciliation proceedings held by the Regional Labour Commissioner(Central), New Delhi under Section 12 of the ID Act. The said settlement is binding on all the work charge employees who are working in the establishment to which the dispute relates. In para 46 it is further stated that apart from the settlement in the conciliation proceeding an award was made by the CGIT Chandigarh in reference no.2-C in an industrial dispute between the work charged employee of the Beas Sutlej Project, Sundernagar with which we are concerned and the management. A consent formula was evolved to which the workmen virtually agreed. In the last para 47 itself

specifically stated that work charged employees are bound by the settlement and award May 15, 1974 and they were entitled to rights those flowing from the settlement and award.

18. So far as the settlement executed between the work charged employees and management through unions, the same has not been produced by the management despite opportunity was given to file the same. Thus, adverse interference can be drawn against them. To support this view, reliance can be placed to the judgment of Hon'ble Punjab & Haryana High Court in case held as***2001(3) RSJ 382 Ambika Parashad Versus Punjab Urban Planning and Development Authority Chandigarh and Another*** **wherein it has been** held **"that respondent has not produced record in the Labour Court to prove that Workman has not completed 240 days of service though application was submitted by the Workman for production of record held that a person in possession of the best evidence has to produce the same, otherwise adverse inference can be drawn against the said party".** In this case also as per order dated 01.05.2024 of this Tribunal. Respondent were asked to produce the settlement arrived between the 12 union of the work charged employee and management under Section 12 of ID Act before the Regional Labour Commissioner, New Delhi and all the work charged employee were bound by the said settlement. However, despite of availing 2-3 opportunities i.e. 20.05.2024, 20.06.2024 and 09.07.2024 the said policy was not produced and as such adverse inference can be drawn against the management in view of the above law.

19. As regards award passed by Central Govt. Industrial Tribunal, Chandigarh, the relevant claim of the work charged employees was regarding their regularization services and the finding given by the Tribunal is as follow:-

"Regulation of Services of the workcharged employees.

It is an un-disputed fact that the entire strength of labour as employed in the Project is workcharged. The institution of workcharged establishment is not only necessary but sometime unavoidable. These workmen are engaged on temporary basis and their services are utilized for the execution of a specified work for which they may be suited. From the very nature of employment the services of such workman automatically come to an end on the completion of the work. A workcharged employee does not get any relief under the Payment of Gratuity Act nor is he benefitted by the employees state Insurance Scheme. He does not indeed enjoy any retiral benefits. Before partition of the country in 1947 it was not usual to have project, construction of which required a number of years to complete but after constituting ourselves into a democratic Republic and the Government having taken in hand five year plans for development of the country there are various schemes involving the construction of works for a period extending over several years as is the case of the instant Project. It commenced in 1962 and more than 12 years having passed the completion might take another few years. In such situation it seems reasonable and fair that a workman who has, like a regular employee, spent the part of his life ranging from 5-10 years upto 20 year, should not be thrown on the road and must be assured some benefits as are available to regular staff. The other aspect of the matter is that the employer could not compelled to retain workcharged employees after the work for which the latter had been engaged is completed, as after all, he was employed before a particular job and the employer, be it the Government or any of its public undertakings, cannot taken upon itself the responsibility of that workman for all time to come. It can be well argued that such a workmen should feel happy and content that instead of remaining un-employed be got employment for a long time.

To assure Industrial peace and economic justice to such class of workmen some balance has in my opinion to be stuck between the two extremes. It is the duty of the State under the Directive Principles enunciated in part 4 of the constitution to secure and protect that social order in which justice, social and economic could be had by all institutions of national life. I fell that it is equally the duty of an adjudicator of industrial disputes charged with the duty of administering social justice to be guided by the fundamentals contained in this chapter though he has to bear In mind the limits of the economic capacity of the employer and Endeavour must have ever be made to secure work for every citizen do in our present economy. It is not possible to immediately achieve that object. The workman employed by the respondent management are drawn from different states out of which I am informed about 8/10 thousands are from Punjab about 22000 from Himachal Pradesh and the remaining from the states of Rajasthan and Haryana. Some of the workmen are from U.P and Bihar and a handful from Kerala. The board hasby and large been consistently following the Punjab pattern in the matter of wage structure, revision thereof from time to time and grant of dearness allowance. It is only with regard to categories not appearing in the common Schedule of Rates prepared by the erstwhile United State of Punjab that the board took its independence decisions on the recommendations of its own standing committee.Even Himachal Pradesh Government generally followed the Punjab policy.The state government of Punjab in its wisdom, and I should say rightly has declared that the services of work charged employees in building and roads branch who had worked for 10 years or more would stand regularized in the sense that the workmen would be treated at par with those in the regular service of the state government.The benefit of this announcement was afterwards extended to the employees of its irrigation branch as well at the workman who held from Punjab continue to stay in their parents state the services of those who had put in 10 years or more would have been regularized the respondent

management too in pursuance of its policy to follow the Punjab pattern might have regularized the services of at least of those workmen who had come from Punjab but any such course would have created awkward situation as the workmen from other States could not be discriminated in this respect.Moreover financial implications and other complications are involved.

In such circumstances stated aboveI would have directed that the services of those of the workman who have been continuously employed for more than 10 years should be regularized. But the other problems arising from such a direction including financial impact on the employer cannot be lost sight of The Central Government through the board is only managing on behalf of the state of Punjab, Rajasthan Haryana and Himachal Pradesh who are partners in the venture.Several aspects of the question were discussed with the workmen and the management in the course of arguments and a formula evolved to which the workman virtually agreed and I feel that such a solution as stated hereunder is quite just to all the parties provided it is work out, honestly stated. No doubt,what is referred to me is the matter of regularization of the services of work charge employees, but the directions that I am issuing in my opinion, amount to only granting lesser relief than claimed by the workmen. The management can also have no grievance if it wants industrial peace and is anxious to secure employment to the work-charged employees after the completion of the work. It is accordingly, directed that at the time of completion of the Project or at any other time within six months thereof for the maintenance staff for the Project or any of its Works if it is required to be recruited or transferred from any department of the State Governments or of the Central Government, the offer shall first be made to the work-charged employees in order of their seniority who have put in 10 years' continuous service or more under the Board in that category or trade where the vacancy occurs subject to the medical fitness of such workmen. The scale of wages as applicable to the workmen will not, however, be disturbed to their prejudice nor their continuity of service affected. The workmen have expressed an apprehension that near the completion of the Project trades of some of them might be changed so that it could be said that a suitable workman needed for a particular job was not available and an outsider was therefore necessary to be employed. To protect the workmen against this possible denial of their rights it is further directed that category or trade of no workman shall be changed within one year preceding the completion of the Project without his consent in writing and that if any such change without consent is made it will have no consequence inasmuch as such a workman will be entitled to the job of his earlier trade provided the vacancy relates to that trade. As regards those of the workmen who cannot be absorbed on the regular maintenance staff. I have no reason to doubt that the State Government who are beneficiaries under the Project and also the Central Government will make every reasonable effort to get them re-employed at any other Project or work whether in any one of these States or in any other part of the country where there is a need for workmen of those trades."

20. A perusal of aforesaid findings made it ample clear that the order has been passed by the then learned Presiding Officer, CGIT, Chandigarh to maintain industrial peace and to secure employment to the work charged employees after the completion of the work and it was also held by the learned CGIT thatState Govt. who are beneficiary under the project and the Central Govt. will make every reasonable effort to get those workmen re-employed at any other project or work whether in any one of these States or in any other part of the country where there is a need of workmen of those trades.

21. Admittedly, in this case, no effort was made by the respondent to give any employment after the retrenchment of the workmen and even there is non-compliance of Rules 77 and 78 of Industrial Rules. The same are reproduced below:

77. Maintenance of seniority list of workmen. *-The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated to be arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.*

78. Re-employment of retrenched workmen. - *(1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies by registered post to every one of all the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time thereafter:*

Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the senior-most retrenched workmen in the list referred to in rule 77 the number of such senior-most workmen being double the number of such vacancies:

Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen:

Provided also that if a retrenched workman, without sufficient cause being shown in writing to the employer, does not offer himself for re-employment on the date or dates specified in the intimation sent to him by the employer under this sub-rule, the employer may not intimate to him the vacancies that may be filled on any subsequent occasion.]

(2) Immediately after complying with the provisions of sub-rule (1), the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under that sub-rule:

Provided that the provisions of this sub-rule need not be complied with by the employer in any case where an intimation is sent to every one of the workmen mentioned in the list prepared under rule 77.

22. However, the present work charged employee and other work-charged employees have been retrenched long back and even at the stage it is impossible to re-employe them. However, certainly in respect of workcharged employees present Respondent was directed by the Hon'ble Supreme Court in Judgment of Jaswant Singh (Supra) to give benefits in terms of settlement and award dated 15.05.1974. The main purpose of Hon'ble Supreme Court and Ld. CGIT Chandigarh was to rehabilitate to some extent the work charged employees and restore peace and congenial atmosphere that is why Ld. CGIT Chandigarh had given directions to all state to re-employe them. Thus, it does not lie in the mouth of present Respondent that no relief can be granted against present Respondent as petitioners are not their employees.

A. So far as this argument of Ld. AR of the management that those work charged employees only who have completed 10 years of service were required to be adjusted within 6 months from their retrenchment is concerned, the same is devoid of merit as no effort was made by the management to adjust the work charged employees. Moreover, no documentary evidence has been produced that any effort was made to adjust the workman after his retrenchment. Further, Ld. CGIT Chandigarh in its last lines concluded as under:-

"As regards those of the workmen who cannot be absorbed on the regular maintenance staff. I have no reason to doubt that the State Government who are beneficiaries under the Project and also the Central Government will make every reasonable effort to get them re-employed at any other Project or work whether in any one of these states or in any other part of the country where there is a need of workmen of those trades"

Nothing has come on record that above directions were complied with.

23. Moreover, in the absence of production of settlement between work charged employees and management, it cannot be interfered what were the terms and conditions in the said settlement. Further, CGIT Chandigarh has fixed ten years time and accrual of vacancy within six months keeping in view the facts and circumstances of the case and has evolved his own formula to bring peace and harmony between work charged employees and management but it cannot be said to be a universal policy in the absence of production of settlement between work charged employees and management. However, no effort was made to adjust the petitioners in view of order of CGIT.

24. As regard, this contention of learned AR of management that petitioners were not the employees of the BBMB but were the employees of BCB, the same is devoid of merit as Discharge certificate was issued by the BBMB. Moreover, as per respondent Beas Control Board was constituted in the year 1960. BCB was constituted in the year 1966 and all the projects were transferred from Beas Control Board to BCB in the year 1966 thereafter as per Section 79 of the Punjab Re-organisation Act, BMB was constituted for administrative, maintenance and operation of various works as mentioned in Section 79 itself. Section 80(6) of the Punjab Re-organisation Act provides that BMB constituted under Section 79 of the Act shall be re-named as BBMB when any of the components of the Beas Project has been transferred under sub-section 5 and the BCB shall cease to exist when all the component of the Beas Project have been so transferred. All the projects under BCB were completed in the year 1984 and BCB ceased to exist in 1984. When all work of BCB stands transferred to BBMB so it cannot be said that BBMB is separate identity than BCB. Rather BCB has merged in BBMB. Moreover, Hon'ble Supreme Court in Jaswant Singh case(supra) in respect of work charged employees has no where stated that relief can be sought by work charged employees only against the BCB. So contention of Ld. AR of the management that BCB and BBMB are two separate entities is devoid of merit.

25. So far this argument of Law Officer for the respondent that the case is hopelessly time barred is concerned, the same is again devoid of merits as there was non-compliance of Rule 77 and 78 of Industrial Rules which has been reproduced above. Moreover, there is no limitation period prescribed for filing a reference. Moreover, reference was received in the year 2005 and thereafter, several rounds of litigations have taken place. So far as case laws on the point of limitation the same are not attracted in the present case as there was no compliance of Judgment of Jawant Singh case (Supra).

26. However, it is added that workman was allowed terminal benefits as admitted by him. Moreover, it is also not case of the petitioner that there is breach of.0 Section 25 F of the Act.

27. Further, there was non-compliance of Jaswant Singh Case (Supra), Reference No.2C of 1971 and Rule 77 & 78 of Industrial Rules and in this case it would be highly difficult to re-employe the workman. The only remedy left is to compensate the workman in term of money.

28. Keeping in view the fact and circumstances of the present case and other connected case of similar nature the following scheme of compensation is deemed fit by this Tribunal:

i. Work charged employee who has completed 5 years of service shall be entitled for Rs.50,000/- along with interest @9% per annum as compensation from the date of moving of application till the realization of amount.

ii. Work charged employee who has completed less than 5 years but more than 1 year would be entitled Rs.25,000/- along with interest @9% per annum from the date of moving of application till the realization of amount.

iii. Those employees who have not completed 1 year will not be entitled for any compensation in the present case.

The present work charged workman was employed on 09.06.1972 and was retrenched on 18.10.1978 as mentioned in Discharge Certificate which is placed on file issued by Sub Divisional Officer, BBMB Sundernagar, and has worked for 6 years and about 4 months (more than 5 years) so he is entitled of Rs.50,000/- along with interest @9% per annum from the date of moving the application till its realization.

29. The reference is answered accordingly and stands disposed off.

30. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

KAMAL KANT, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2024

का.आ. 1870.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. बी. एम. बी. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण- सह - श्रम न्यायालय नंबर II** चंडीगढ़ के पंचाट **(संदर्भ संख्या 213/2005)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **29/08/2024** को प्राप्त हुआ था।

[फा. सं. एल–23012/76/2004-आई. आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 26th September, 2024

S.O. 1870.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No.213/2005*)*** of **the Central Government Industrial Tribunal-cum-Labour Court NO 2, Chandigarh** as shown in the Annexure, in the industrial dispute between the Management of **BBMB** and their workmen, received by the Central Government on ***29/08/2024.***

[F. No. L-23012/76/2004– IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Mr. Kamal Kant, Presiding Officer.

ID No. 213 /2005
Registered on:- 03.08.2005
Mangloo Ram S/o Siblu, C/o Shri Hem Prabh S/o Sh. Bali Ram, R/o Village Bhayarta, P.O. Chanahan, Teh. & Distt. Mandi (HP).

……....Workman

Versus

1. Bhakra Beas management Board, Madhya Marg, Sector 19-B, Chandigarh through its Chairman.

2. The Chief Engineer, BSL Project Sundernagar Township, Distt. Mandi, (HP).

…..Respondents/Managements

AWARD

Passed on:- 15.07.2024

Central Government vide Notification No.L-23012/76/2004-IR(CM-II), dated 07.07.2005, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the demand of Shri Mangloo Ram for reinstatement in the services of BBMB, Sunder Nagar is legal and justified? If so, to what relief the concerned workman is entitled and from which date?

1. The brief facts, related to the case are that the construction of Beas Sutluj Link Project{hereinafter called as BSL(P)} started in the year 1962 under Beas Control Board, which was constituted on 10.02.1961 with its headquarter at Sundernagar and this project was under the control of Centre Government, who had been constructing, maintaining, operating and administrating it through various Boards in different phases. After passing of Pb. Re-Organisation Act, 1966(hereinafter called "Re-Organisation Act") Beas Control Board was replaced by Beas Construction Board (hereinafter called "BCB"). The workman was employed by Beas Construction Board on 01.11.1972. The workman who was employed in Beas Project(Unit-1) become the employee of Bhakra Beas Management Board(hereinafter called as BBMB) in pursuance of proviso (1) of Section 80(3) and Section 80(5) of Re-organisation Act and the workman become the employee of the Centre Government under the management of B.B.M.B. from 15.05.1976. The workman has completed 240 days in every calendar year and was not interrupted till his retrenchment. The employer made a bulk retrenchment of project employees in the year 1977 and 1978 and also in stages thereafter till 1984. The workman was also retrenched by the employer on 01.12.1978 on account of reduction in strength due to part completion of the BSL(P) and re-employment certificate was issued by the office of re-settlement B.S.L/B.B.M.B. Sundernagar for the re-employment of the retrenched workmen of B.S.L.(P)(BBMB) in accordance with provision of the Act. After the retrenchment of the workman, thousands of other persons were appointed secretly by employer, violating Section 25-G and Section 25-H of the I.D. Act, 1947. The employer is also doing unfair labour practices as defined in Section 2(R)A of the ID Act. Management has also violated the provisions of Rules 77 and 78 of Industrial Dispute(Central) Rule, 1957(hereinafter called "The Industrial Rules"). By filling vacant posts, the employer declared some posts as surplus and retrenched the employees working on those posts.

2. It is also maintained that the present workman and other workmen have filed a Civil Writ Petition No.403/1996, titled as Sant Ram and 87 others Vs. BBMB in the Hon'ble High Court of Shimla for their re-employment and in the said writ petition management filed reply dated 16.04.1996 by way of affidavit and admitted that retrenched workmen are employee of BBMB. The workmen have then withdrew the writ petition and filed civil suits for declaring them as a retrenched workmen of BBMB before the Sub-Judge, 1st Class, Sunder Nagar, Distt. Mandi(HP), on 21.01.1997 and later on those suits were decided on 05.07.2002 and all plaints were returned to the workmen to be filed before the competent authority on the basis of which the present proceedings were initiated after referring of the dispute of workman from the Ministry of Labour on 07.07.2005. Thereafter, management filed writ petition before the Hon'ble Punjab & Haryana High Court against the order of Ministry on 07.07.2005 and the same was dismissed on 07.05.2007 and Special Leave Petition filed bearing nos.16939-17007 of 2007 in Hon'ble Supreme Court of India by the management was also dismissed on 08.07.2014. It is therefore, prayed that the claim petition of the workman may kindly be allowed and workman be continued in the service of the management and be regularized and further be given all the consequential benefits.

3. Management filed written statement, alleging therein that workman is Ex-work charged employee of Beas Construction Board, which was constituted under Section 80(1) of the Re-organisation Act. The workman was retrenched after completion of the work of BCB in the year 1978. The workman was paid terminal benefits i.e. retrenchment compensation, gratuity, ex-gratia amount on account of his retrenchment from BCB as per provisions of ID Act. It is further maintained that BCB and present management are two distinct and separate entities. It is also maintained that construction of Beas Project was undertaken by the Punjab Govt. Irrigation Department prior to the re-organisation of the erstwhile State of Punjab on 01.01.1966. After re-organisation the work of BSL(P) was taken over by the Central Govt. on behalf of partner states of Punjab, Haryana and Rajasthan. The Central Govt. constituted BCB under Section 80(5) of the Re-organisation Act and further stipulated that any component of Beas Project in relation to which the construction has been completed be transferred by the Central Govt. to Bhakra Management Board(hereinafter called as BMB) constituted under Section 79(1) of the Re-organisation Act. It is further stated under Section 80(5) of the Re-organisation Act that BMB would be re-named as BBMB when any component of Beas Project was transferred under Section 80(6) of the Re-organisation Act. The workman was employed by the BCB.

Thus, the workman never remained the employee of management. However, it is stated that 1093 work-charged and 12 contingent paid employees of Beas Project were sent on job order basis to Ranjit Sagar Dam, Punjab. They were taken over by the management under the benevolent policy of the Central Govt. as Central Govt. had given directions to BBMB to absorb these employees. The remaining work-charged employees were not entitled for the said benefit. Even work-charged employees of the BCB had filed a petition in the Hon'ble Supreme Court of India, titled as ***Jaswant Singh and another Vs. Union of India & Anr., 1979 SCC 440,*** in which their claim for absorbing them in BBMB is not granted instead their retrenchment from BCB was upheld. Remaining averments have been denied and it is stated that the claim of the workman is hopelessly time barred and the workman has no legal enforceable right to claim employment in BBMB. It is prayed that claim be dismiss.

4. A replication was also filed by workman contravening the facts taken in written statement as reiterating the facts as stated in claim petition.

5. Parties were given opportunity to lead evidence.

6. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A and has been cross-examined by the learned law officer of management. He also tendered document Ex. W-1 Discharge Certificate, Ex.W-2 Identity Card.

7. The management has filed affidavit of N.M. Jain, Sub-Divisional Officer, Sub- Division BBMB Sunder Nagar, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned counsel of workman.

8. While arguing the case, learned Law Officer for the management contended that initially Beas Control Board was constituted in the year 1960. BCB was constituted in the year 1966 and all the projects were transferred from Beas Control Board to BCB in the year 1966 thereafter as per Section 79 of the Punjab Re-organisation Act, BMB was constituted for administrative, maintenance and operation of various works as mentioned in Section 79 itself. Section 80(6) of the Punjab Re-organisation Act provides that BMB constituted under Section 79 of the Act shall be re-named as BBMB when any of the components of the Beas Project has been transferred under sub-section 5 and the BCB shall cease to exist when all the component of the Beas Project have been so transferred. All the projects under BCB were completed in the year 1984 and BCB ceased to exist in 1984. Present workman was employed as work charged employee 01.11.1972 and was retrenched on 01.12.1978. All similar work charged employees including the present workman was engaged by the BCB which ceased to exist in the year 1984 therefore, the workmen cannot be termed as the employees of the BBMB because there does not exist BCB which was his parent department. Moreover, the Hon'ble Supreme Court in the case titled as ***Jaswant Singh and another Vs. Union of India & Anr., 1979 SCC 440*** has held that work charged employees were bound by the settlement dated June 28, 1977 effected by the management and also by the award 2-C of the year 1971 before Sh. H.R. Sodhi, Presiding Officer, CGIT-Chandigarh between workman and employees of the Beas Construction Board, Sunder Nagar and published in the gazette on 15.06.1974 of the Govt. of India.

9. So far as the claim of the workman regarding re-employment after retrenchment on 01.12.1978 is concerned, workman was not entitled for re-instatement as in a case under reference no.2-C of 1971 decided by Sh. H.R. Sodhi, the then Presiding Officer, CGIT-Chandigarh, it was held that management in order to establish an industrial peace and to secure the work charge employees after completing the work can engage after completion of project at any time within 6 months for the maintenance of staff for project of any work if it is required to those work charged employees in order to seniority who have put 10 years of service. The relevant portion of para is reproduced as below:

> ***"It is accordingly, directed that at the time of completion of the Project or at any other time within six months thereof for the maintenance staff for the Project or any of its Works if it is required to be recruited or transferred from any department of the State Governments or of the Central Government, the offer shall first be made to the work-charged employees in order of their seniority who have put in 10 years' continuous service or more under the Board in that category or trade where the vacancy occurs subject to the medical fitness of such workmen. The scale of wages as applicable to the workmen will not, however, be disturbed to their prejudice nor their continuity of service affected."***

10. Because the present workman had not completed 10 years of service so he is not entitled for re-employment. Learned representative for the management further contended that in this case workman was retrenched on 01.12.1978 after receiving due retrenchment compensation etc. and now he is claiming re-employment under Section 25-H of the Act and his claim is hopelessly time barred as he has filed the present claim petition on 20.07.2005. To support this view he has placed reliance in the case titled as ***Chief Engineer Ranjit Sagar Dam & Anr. Vs. Sham Lal, AIR 2006, Supreme Court 2682,*** wherein in identical matters Court has not entertained writ petition due to inordinate delay. In the present case there is a delay of about 27 years. He also relied upon the case titled as ***Ram Chand Vs. The BBMB and another, CWP no.2787 of 2018, decided on 03.12.2018***(Annexure R-4) where the Hon'ble Himachal Pradesh High Court has held that dispute if any ought to be raised within a reasonable period as the ID Act does not prescribed time limit for referring such dispute. In the present case workman was engaged as Beldar in the year 1972 and was discharged on 01.12.1978 and he has sought re-employment after 33 years which was held to be highly time

barred. Thus, he contended that claim of workman is time barred. Workman was discharged on 01.12.1978 and thereafter he filed present claim before the Labour Conciliation Officer on 30.11.2005.

11. While arguing the case, learned AR for the workman contended that in this case workman was discharged on 01.12.1978 due to reduction in strength and he was issued discharge certificate by Sub Divisional Officer, BBMB Sundernagar. He referred to Section 25-H of the ID Act which provides re-employment of retrenched workman. He further has drawn the attention of the Court towards the statement of the workman. He was required to be adjust in view of under Section 25-G of the Act by the management Discharge Certificate was issued by the Management. He was not given any employment. While arguing further, learned AR for the workman referred to Rule 77 and 78 of the Industrial Dispute Central Rule 1957(hereinafter called Industrial Rule). Rule 77 provides maintenance of seniority list of workman and it states that before any worker is retrenched the appellant-establishment is required to place on the notice board the seniority list of all the workmen who were to be retrenched but nothing has been done in this regard before retrenchment of the present worker. She also referred to Rule 78 which provides that as and when any vacancy incurred then retrenched workmen were required to be given registered notice but nothing was done by the management. Moreover, question of limitation does not arise as no limitation period has been prescribed under the Act for seeking relief under Clause (d) of Sub-Section (1) of Section 10 of the ID Act. Learned AR for the workman further contended that even reference made by the Government dated 07.07.2005 was challenged by the management in the Hon'ble Punjab & Haryana High Court vide Writ Petition No.3100 of 2006 and their writ petition was dismissed by the Hon'ble High Court on 07.05.2007. Even SLP filed against the order dated 07.05.2007 was upheld by the Hon'ble Supreme Court in SLP No.16979/2007 dated 08.07.2014.

12. I have given due consideration to the arguments advanced by the learned AR for the workman and also for the management.

13. The management relied upon mainly in this case on the case titled as ***Jaswant Singh and another(supra),*** which is very material for decision of this case. The said judgment deals with two types of petitioners. First type of petitioners were employed by the BCB on purely temporary basis and they had also given written undertaking confirming the term of their appointment. The BCB appointed the first type of petitioners on ad hoc basis with a clear understanding that they will have no right to be retained in service after the completion of the Beas Project. They are Engineers, Section Officer, Accounts Clerk, Teacher etc. and they have claimed their parity with other employees who belonged to the services of the Punjab, Haryana and Rajasthan Governments and who were serving on deputation in connection with the works of the BhakraNangal Scheme.

14. In respect of these employees, it was held as follow:-

> ***"To sum up, we are of the opinion that the petitioners are employees of the Central Government. Their conditions of service will be primarily governed by the terms of their appointment but, if they are entitled to the benefit of any of the rules of the Central Civil Services (Temporary Service) Rules 1965, they may make representations in that behalf to the appropriate authorities. It is, however, not possible for this Court to grant to the petitioners any of the reliefs claimed by them as arising out of the provisions of the aforesaid rules, including the relief by way of a declaration that they shall be deemed to be in quasi-permanent service under rule 3. We are further of the opinion that the petitioners have no right to be transferred to the services of the Bhakra Management Board, now re-named as the Bhakra Beas Management Board. Lastly, the proposed retrenchment of the petitioners does not offend against the guarantee of equality contained in articles 14 and 16 of the Constitution, since the petitioners and the Deputationists belong to two different and distinct classes."***

15. As regards, second type of employees i.e. work charged employees the judgment deals in Para 41, 42, 43, 44, 45, 46 and 47 which read as follow:-

> ***"41. A work-charged establishment broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the work.***
>
> ***42. The entire strength of labour employed for the purposes of the Beas Project was work-charged. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. They do not get any relief under the Payment of Gratuity Act nor do they receive any retrenchment benefits or any benefits under the Employees State Insurance Schemes.***
>
> ***43. But though the work-charged employees are denied these benefits, they are industrial workers and are entitled to the benefits of the pro- visions contained in the Industrial Disputes Act. Their rights flow from that special enactment under which even contracts of employment are open to adjustment9 and***

modification. The work-charged employees, therefore, are in a better position than temporary servant like the other petitioners who are liable to be thrown out of employment without any kind of compensatory benefits.

44. The record of Writ Petition No. 4505 of 1978 shows that offers of alternative employment were made to the work- charged employees and many of them have accepted those offers. The rule of 'last come, first go' has also been consistently adopted while retrenching the work-charged employees. In fact the work-charged employees possess a unique right as industrial employees since, by reason of section 25J(1) of the Industrial Disputes Act, the provisions of Chapter VA, "Lay-off and Retrenchment", have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing orders) Act, 1946.

45. There were in all about 36000 work-charged employees working on the Beas Project. Out of them, about 26000 have already accepted retrenchment compensation under the settlement arrived between the workmen and the management in the conciliation proceedings held by the Regional Labour Commissioner (Central), New Delhi, under section 12 of the Industrial Disputes Act, 1947. All the 12 unions of which the work-charged employees are members were parties to the said conciliation proceedings. By reason of section 18(3)(d) of the Industrial Disputes Act, a settlement arrived at in the course of a conciliation proceeding is binding on all persons who were employed in the establishment to which the dispute relates, whether they were employed on the date of the dispute or subsequently. In Ramnagar Cane and Sugar Co. Ltd. v. JatinChakravorty and ors., it was held by this Court that it is not even necessary, in order to bind the work men to the settlement arrived at before the conciliator, to show that they belonged to the union which took part in the conciliation proceedings, since the policy underlying section 18 of the Act is to give an extended operation to such settlements. In the instant case, all the 12 unions which represented the workmen on the work-charged establishment were parties to the conciliation proceedings. The settlement will therefore bind all the work-charged employees.

46. Apart from the settlement in the conciliation proceedings, an award was made by the Industrial Tribunal, Central, Chandigarh, in Reference No. 2-C of 1971, in an industrial dispute between the work-charged employees of the Beas-Sutlej Link Project, Sundernagar, with which we are concerned, and the management. Under that award, as stated in the award itself, a consent formula was evolved to which the workmen "virtually agreed". The benefits which flow- to the work- charged employees under the aforesaid award dated May 15, 1974, have been accepted by almost all the work- charged employees, involving a burden of about Rs. 3 crores on the employers.

47. Since the work-charged employees are bound by the settlement dated June 28, 1977 effected between them and the management in the conciliation proceedings and since they are also bound by and have accepted benefits under the consent award dated May 15, 1974 they are not entitled to any rights apart from those flowing from the aforesaid settlement and the Award. SLP No.1246 of 1979 which is filed to challenge the Award and C.M.P. No.2077 of 1979 which is filed for condonation of the delay of over four and half years caused in filing the SLP shall have to be dismissed."

16. Thus, from the above observation of Supreme Court it is clear that work charged employees are engaged on a temporary basis and their appointments are made for the specified work and their service comes to an end on the completion of work for the sole purpose of which they are employed.

17. Para 43 provides that work charged employees are industrial worker and entitled to the benefit of the provisions contained under the Industrial Disputes Act. Their rights flow from that special enactment under which even contracts of employment are open to adjustment and modification. Para 45 as reproduced above further provides that in the conciliation proceeding it has been held that there were about 36000 work charged employees working on Beas Project out of them 26000 has already accepted retrenchment compensation under the settlement arrived between the workmen and the management in the conciliation proceedings held by the Regional Labour Commissioner(Central), New Delhi under Section 12 of the ID Act. The said settlement is binding on all the work charge employees who are working in the establishment to which the dispute relates. In para 46 it is further stated that apart from the settlement in the conciliation proceeding an award was made by the CGIT Chandigarh in reference no.2-C in an industrial dispute between the work charged employee of the Beas Sutlej Project, Sundernagar with which we are concerned and the management. A consent formula was evolved to which the workmen virtually agreed. In the last para 47 itself specifically stated that work charged employees are bound by the settlement and award May 15, 1974 and they were entitled to rights those flowing from the settlement and award.

18. So far as the settlement executed between the work charged employees and management through unions, the same has not been produced by the management despite opportunity was given to file the same. Thus, adverse interference can be drawn against them. To support this view, reliance can be placed to the judgment of Hon'ble Punjab & Haryana High Court in case held as***2001(3) RSJ 382 Ambika Parashad Versus Punjab Urban Planning and Development Authority Chandigarh and Another*** **wherein it has been** held **"that respondent has not**

produced record in the Labour Court to prove that Workman has not completed 240 days of service though application was submitted by the Workman for production of record held that a person in possession of the best evidence has to produce the same, otherwise adverse inference can be drawn against the said party". In this case also as per order dated 01.05.2024 of this Tribunal. Respondent were asked to produce the settlement arrived between the 12 union of the work charged employee and management under Section 12 of ID Act before the Regional Labour Commissioner, New Delhi and all the work charged employee were bound by the said settlement. However, despite of availing 2-3 opportunities i.e. 20.05.2024, 20.06.2024 and 09.07.2024 the said policy was not produced and as such adverse inference can be drawn against the management in view of the above law.

19. As regards award passed by Central Govt. Industrial Tribunal, Chandigarh, the relevant claim of the work charged employees was regarding their regularization services and the finding given by the Tribunal is as follow:-

"Regulation of Services of the workcharged employees.

It is an un-disputed fact that the entire strength of labour as employed in the Project is workcharged. The institution of workcharged establishment is not only necessary but sometime unavoidable. These workmen are engaged on temporary basis and their services are utilized for the execution of a specified work for which they may be suited. From the very nature of employment the services of such workman automatically come to an end on the completion of the work. A workcharged employee does not get any relief under the Payment of Gratuity Act nor is he benefitted by the employees state Insurance Scheme. He does not indeed enjoy any retiral benefits. Before partition of the country in 1947 it was not usual to have project, construction of which required a number of years to complete but after constituting ourselves into a democratic Republic and the Government having taken in hand five year plans for development of the country there are various schemes involving the construction of works for a period extending over several years as is the case of the instant Project. It commenced in 1962 and more than 12 years having passed the completion might take another few years. In such situation it seems reasonable and fair that a workman who has, like a regular employee, spent the part of his life ranging from 5-10 years upto 20 year, should not be thrown on the road and must be assured some benefits as are available to regular staff. The other aspect of the matter is that the employer could not compelled to retain workcharged employees after the work for which the latter had been engaged is completed, as after all, he was employed before a particular job and the employer, be it the Government or any of its public undertakings, cannot taken upon itself the responsibility of that workman for all time to come. It can be well argued that such a workmen should feel happy and content that instead of remaining un-employed be got employment for a long time.

To assure Industrial peace and economic justice to such class of workmen some balance has in my opinion to be stuck between the two extremes. It is the duty of the State under the Directive Principles enunciated in part 4 of the constitution to secure and protect that social order in which justice, social and economic could be had by all institutions of national life. I fell that it is equally the duty of an adjudicator of industrial disputes charged with the duty of administering social justice to be guided by the fundamentals contained in this chapter though he has to bear In mind the limits of the economic capacity of the employer and Endeavour must have ever be made to secure work for every citizen do in our present economy. It is not possible to immediately achieve that object. The workman employed by the respondent management are drawn from different states out of which I am informed about 8/10 thousands are from Punjab about 22000 from Himachal Pradesh and the remaining from the states of Rajasthan and Haryana. Some of the workmen are from U.P and Bihar and a handful from Kerala. The board hasby and large been consistently following the Punjab pattern in the matter of wage structure, revision thereof from time to time and grant of dearness allowance. It is only with regard to categories not appearing in the common Schedule of Rates prepared by the erstwhile United State of Punjab that the board took its independence decisions on the recommendations of its own standing committee.Even Himachal Pradesh Government generally followed the Punjab policy.The state government of Punjab in its wisdom, and I should say rightly has declared that the services of work charged employees in building and roads branch who had worked for 10 years or more would stand regularized in the sense that the workmen would be treated at par with those in the regular service of the state government.The benefit of this announcement was afterwards extended to the employees of its irrigation branch as well at the workman who held from Punjab continue to stay in their parents state the services of those who had put in 10 years or more would have been regularized the respondent management too in pursuance of its policy to follow the Punjab pattern might have regularized the services of at least of those workmen who had come from Punjab but any such course would have created awkward situation as the workmen from other States could not be discriminated in this respect.Moreover financial implications and other complications are involved.

In such circumstances stated aboveI would have directed that the services of those of the workman who have been continuously employed for more than 10 years should be regularized. But the other problems arising from such a direction including financial impact on the employer cannot be lost

sight of The Central Government through the board is only managing on behalf of the state of Punjab, Rajasthan Haryana and Himachal Pradesh who are partners in the venture.Several aspects of the question were discussed with the workmen and the management in the course of arguments and a formula evolved to which the workman virtually agreed and I feel that such a solution as stated hereunder is quite just to all the parties provided it is work out, honestly stated. No doubt,what is referred to me is the matter of regularization of the services of work charge employees, but the directions that I am issuing in my opinion, amount to only granting lesser relief than claimed by the workmen. The management can also have no grievance if it wants industrial peace and is anxious to secure employment to the work-charged employees after the completion of the work. It is accordingly, directed that at the time of completion of the Project or at any other time within six months thereof for the maintenance staff for the Project or any of its Works if it is required to be recruited or transferred from any department of the State Governments or of the Central Government, the offer shall first be made to the work-charged employees in order of their seniority who have put in 10 years' continuous service or more under the Board in that category or trade where the vacancy occurs subject to the medical fitness of such workmen. The scale of wages as applicable to the workmen will not, however, be disturbed to their prejudice nor their continuity of service affected. The workmen have expressed an apprehension that near the completion of the Project trades of some of them might be changed so that it could be said that a suitable workman needed for a particular job was not available and an outsider was therefore necessary to be employed. To protect the workmen against this possible denial of their rights it is further directed that category or trade of no workman shall be changed within one year preceding the completion of the Project without his consent in writing and that if any such change without consent is made it will have no consequence inasmuch as such a workman will be entitled to the job of his earlier trade provided the vacancy relates to that trade. As regards those of the workmen who cannot be absorbed on the regular maintenance staff. I have no reason to doubt that the State Government who are beneficiaries under the Project and also the Central Government will make every reasonable effort to get them re-employed at any other Project or work whether in any one of these States or in any other part of the country where there is a need for workmen of those trades."

20. A perusal of aforesaid findings made it ample clear that the order has been passed by the then learned Presiding Officer, CGIT, Chandigarh to maintain industrial peace and to secure employment to the work charged employees after the completion of the work and it was also held by the learned CGIT thatState Govt. who are beneficiary under the project and the Central Govt. will make every reasonable effort to get those workmen re-employed at any other project or work whether in any one of these States or in any other part of the country where there is a need of workmen of those trades.

21. Admittedly, in this case, no effort was made by the respondent to give any employment after the retrenchment of the workmen and even there is non-compliance of Rules 77 and 78 of Industrial Rules. The same are reproduced below:

***77. Maintenance of seniority list of workmen**. -The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated to be arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.*

***78. Re-employment of retrenched workmen. -** (1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies by registered post to every one of all the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time thereafter:*

Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the senior-most retrenched workmen in the list referred to in rule 77 the number of such senior-most workmen being double the number of such vacancies:

Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen:

Provided also that if a retrenched workman, without sufficient cause being shown in writing to the employer, does not offer himself for re-employment on the date or dates specified in the intimation sent to him by the employer under this sub-rule, the employer may not intimate to him the vacancies that may be filled on any subsequent occasion.]

(2) Immediately after complying with the provisions of sub-rule (1), the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under that sub-rule:

Provided that the provisions of this sub-rule need not be complied with by the employer in any case where an intimation is sent to every one of the workmen mentioned in the list prepared under rule 77.

22. However, the present work charged employee and other work-charged employees have been retrenched long back and even at the stage it is impossible to re-employe them. However, certainly in respect of workcharged employees present Respondent was directed by the Hon'ble Supreme Court in Judgment of Jaswant Singh (Supra) to give benefits in terms of settlement and award dated 15.05.1974. The main purpose of Hon'ble Supreme Court and Ld. CGIT Chandigarh was to rehabilitate to some extent the work charged employees and restore peace and congenial atmosphere that is why Ld. CGIT Chandigarh had given directions to all state to re-employe them. Thus, it does not lie in the mouth of present Respondent that no relief can be granted against present Respondent as petitioners are not their employees.

A. So far as this argument of Ld. AR of the management that those work charged employees only who have completed 10 years of service were required to be adjusted within 6 months from their retrenchment is concerned, the same is devoid of merit as no effort was made by the management to adjust the work charged employees. Moreover, no documentary evidence has been produced that any effort was made to adjust the workman after his retrenchment. Further, Ld. CGIT Chandigarh in its last lines concluded as under:-

"As regards those of the workmen who cannot be absorbed on the regular maintenance staff. I have no reason to doubt that the State Government who are beneficiaries under the Project and also the Central Government will make every reasonable effort to get them re-employed at any other Project or work whether in any one of these states or in any other part of the country where there is a need of workmen of those trades"

Nothing has come on record that above directions were complied with.

23. Moreover, in the absence of production of settlement between work charged employees and management, it cannot be interfered what were the terms and conditions in the said settlement. Further, CGIT Chandigarh has fixed ten years time and accrual of vacancy within six months keeping in view the facts and circumstances of the case and has evolved his own formula to bring peace and harmony between work charged employees and management but it cannot be said to be a universal policy in the absence of production of settlement between work charged employees and management. However, no effort was made to adjust the petitioners in view of order of CGIT.

24. As regard, this contention of learned AR of management that petitioners were not the employees of the BBMB but were the employees of BCB, the same is devoid of merit as Discharge certificate was issued by the BBMB. Moreover, as per respondent Beas Control Board was constituted in the year 1960. BCB was constituted in the year 1966 and all the projects were transferred from Beas Control Board to BCB in the year 1966 thereafter as per Section 79 of the Punjab Re-organisation Act, BMB was constituted for administrative, maintenance and operation of various works as mentioned in Section 79 itself. Section 80(6) of the Punjab Re-organisation Act provides that BMB constituted under Section 79 of the Act shall be re-named as BBMB when any of the components of the Beas Project has been transferred under sub-section 5 and the BCB shall cease to exist when all the component of the Beas Project have been so transferred. All the projects under BCB were completed in the year 1984 and BCB ceased to exist in 1984. When all work of BCB stands transferred to BBMB so it cannot be said that BBMB is separate identity than BCB. Rather BCB has merged in BBMB. Moreover, Hon'ble Supreme Court in Jaswant Singh case(supra) in respect of work charged employees has no where stated that relief can be sought by work charged employees only against the BCB. So contention of Ld. AR of the management that BCB and BBMB are two separate entities is devoid of merit.

25. So far this argument of Law Officer for the respondent that the case is hopelessly time barred is concerned, the same is again devoid of merits as there was non-compliance of Rule 77 and 78 of Industrial Rules which has been reproduced above. Moreover, there is no limitation period prescribed for filing a reference. Moreover, reference was received in the year 2005 and thereafter, several rounds of litigations have taken place. So far as case laws on the point of limitation the same are not attracted in the present case as there was no compliance of Judgment of Jawant Singh case (Supra).

26. However, it is added that workman was allowed terminal benefits as admitted by him. Moreover, it is also not case of the petitioner that there is breach of Section 25 F of the Act.

27. Further, there was non-compliance of Jaswant Singh Case (Supra), Reference No.2C of 1971 and Rule 77 & 78 of Industrial Rules and in this case it would be highly difficult to re-employe the workman. The only remedy left is to compensate the workman in term of money.

28. Keeping in view the fact and circumstances of the present case and other connected case of similar nature the following scheme of compensation is deemed fit by this Tribunal:

i. Work charged employee who has completed 5 years of service shall be entitled for Rs.50,000/- along with interest @9% per annum as compensation from the date of moving of application till the realization of amount.

ii. Work charged employee who has completed less than 5 years but more than 1 year would be entitled Rs.25,000/- along with interest @9% per annum from the date of moving of application till the realization of amount.

iii. Those employees who have not completed 1 year will not be entitled for any compensation in the present case.

The present work charged workman was employed on 01.11.1972 and was retrenched on 01.12.1978 as mentioned in Discharge Certificate (Ex.W-1) issued by Sub Divisional Officer, BBMB Sundernagar, and has worked for 6 years and about 1 month (more than 5 years) so he is entitled of Rs.50,000/- along with interest @9% per annum from the date of moving the application till its realization.

29. The reference is answered accordingly and stands disposed off.

30. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

KAMAL KANT, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2024

का.आ. 1871.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. बी. एम. बी. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण**- सह - **श्रम न्यायालय नंबर II** चंडीगढ़ के पंचाट **(संदर्भ संख्या 232/2005)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **29/08/2024** को प्राप्त हुआ था।

[फा. सं. एल–23012/65/2004-आई. आर. (सी.एम-.II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 26th September, 2024

S.O. 1871.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No.232/2005*)*** of **the Central Government Industrial Tribunal-cum-Labour Court NO 2, Chandigarh** as shown in the Annexure, in the industrial dispute between the Management of **BBMB** and their workmen, received by the Central Government on ***29/08/2024.***

[F. No. L-23012/65/2004– IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Mr. Kamal Kant, Presiding Officer.

ID No. 232 /2005
Registered on:- 20.07.2005
Niaz Mohd., S/o Shri Roshan Mohd deceased workman being represented through his following legal heirs:

i. Gulzar Bibi W/o Niaz Mohd.

ii. Mohammad Rafi S/o Niaz Mohd.

All residents of Village & Post Officer Neer Chowk, The. Balh. Distt Mandi.

……....Workman

Versus

1. Bhakra Beas management Board, Madhya Marg, Sector 19-B, Chandigarh through its Chairman.
2. The Chief Engineer, BSL Project Sundernagar Township, Distt. Mandi, (HP).

…..Respondents/Managements

AWARD

Passed on:- 18.07.2024

Central Government vide Notification No.L-23012/65 /2004-IR(CM-II), dated 07.07.2005, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the demand of Shri Niaz Mohd for reinstatement in the services of BBMB, Sunder Nagar is legal and justified? If so, to what relief the concerned workman is entitled and from which date?

1. At the very outset it is pertinent to mention here that Niaz Mohd. Expired on 21.11.2022 during the pendency of reference and his LRs were impleaded as party in his place on 25.10.2023

2. The brief facts, related to the case are that the construction of Beas Sutluj Link Project{hereinafter called as BSL(P)} started in the year 1962 under Beas Control Board, which was constituted on 10.02.1961 with its headquarter at Sundernagar and this project was under the control of Centre Government, who had been constructing, maintaining, operating and administrating it through various Boards in different phases. After passing of Pb. Re-Organisation Act, 1966(hereinafter called "Re-Organisation Act") Beas Control Board was replaced by Beas Construction Board (hereinafter called as BCB). The workman was employed by Beas Construction Board on 27.11.1965. The workman who was employed in Beas Project(Unit-1) become the employee of Bhakra Beas Management Board(hereinafter called as BBMB) in pursuance of proviso (1) of Section 80(3) and Section 80(5) of Re-organisation Act and the workman become the employee of the Centre Government under the management of B.B.M.B. from 15.05.1976. The workman has completed 240 days in every calendar year and was not interrupted till his retrenchment. The employer made a bulk retrenchment of project employees in the year 1977 and 1978 and also in stages thereafter till 1984. The workman was also retrenched by the employer on 28.08.1978 on account of reduction in strength due to part completion of the BSL(P) and re-employment certificate was issued by the office of re-settlement B.S.L/B.B.M.B. Sundernagar for the re-employment of the retrenched workmen of B.S.L.(P)(BBMB) in accordance with provision of the Act. After the retrenchment of the workman, thousands of other persons were appointed secretly by employer, violating Section 25-G and Section 25-H of the I.D. Act, 1947. The employer is also doing unfair labour practices as defined in Section 2(R)A of the ID Act. Management has also violated the provisions of Rules 77 and 78 of Industrial Dispute(Central) Rule, 1957(hereinafter called "The Industrial Rules"). By filling vacant posts, the employer declared some posts as surplus and retrenched the employees working on those posts.

3. It is also maintained that the present workman and other workmen have filed a Civil Writ Petition No.403/1996, titled as Sant Ram and 87 others Vs. BBMB in the Hon'ble High Court of Shimla for their re-employment and in the said writ petition management filed reply dated 16.04.1996 by way of affidavit and admitted that retrenched workmen are employee of BBMB. The workmen have then withdrew the writ petition and filed civil suits for declaring them as a retrenched workmen of BBMB before the Sub-Judge, 1st Class, Sunder Nagar, Distt. Mandi(HP), on 21.01.1997 and later on those suits were decided on 05.07.2002 and all plaints were returned to the workmen to be filed before the competent authority on the basis of which the present proceedings were initiated after referring of the dispute of workman from the Ministry of Labour on 07.07.2005. Thereafter, management filed writ petition before the Hon'ble Punjab & Haryana High Court against the order of Ministry on 07.07.2005 and the same was dismissed on 07.05.2007 and Special Leave Petition filed bearing nos.16939-17007 of 2007 in Hon'ble Supreme Court of India by the management was also dismissed on 08.07.2014. It is therefore, prayed that the claim petition of the workman may kindly be allowed and workman be continued in the service of the management and be regularized and further be given all the consequential benefits.

4. Management filed written statement, alleging therein that workman is Ex-work charged employee of Beas Construction Board, which was constituted under Section 80(1) of the Re-organisation Act. The workman was retrenched after completion of the work of BCB in the year 1978. The workman was paid terminal benefits i.e. retrenchment compensation, gratuity, ex-gratia amount on account of his retrenchment from BCB as per provisions of ID Act. It is further maintained that BCB and present management are two distinct and separate entities. It is also maintained that construction of Beas Project was undertaken by the Punjab Govt. Irrigation Department prior to the re-organisation of the erstwhile State of Punjab on 01.01.1966. After re-organisation the work of BSL(P) was taken over by the Central Govt. on behalf of partner states of Punjab, Haryana and Rajasthan. The Central Govt. constituted BCB under Section 80(5) of the Re-organisation Act and further stipulated that any component of Beas Project in relation to which the construction has been completed be transferred by the Central Govt. to Bhakra Management Board(hereinafter called as BMB) constituted under Section 79(1) of the Re-organisation Act. It is further stated under Section 80(5) of the Re-organisation Act that BMB would be re-named as BBMB when any component of Beas Project was transferred under Section 80(6) of the Re-organisation Act. The workman was employed by the BCB. Thus, the workman never remained the employee of management. However, it is stated that 1093 work-charged and 12 contingent paid employees of Beas Project were sent on job order basis to Ranjit Sagar Dam, Punjab. They were taken over by the management under the benevolent policy of the Central Govt. as Central Govt. had given directions to BBMB to absorb these employees. The remaining work-charged employees were not entitled for the said benefit. Even work-charged employees of the BCB had filed a petition in the Hon'ble Supreme Court of India, titled as

Jaswant Singh and another Vs. Union of India & Anr., 1979 SCC 440, in which their claim for absorbing them in BBMB is not granted instead their retrenchment from BCB was upheld. Remaining averments have been denied and it is stated that the claim of the workman is hopelessly time barred and the workman has no legal enforceable right to claim employment in BBMB. It is prayed that claim be dismiss.

5. A replication was also filed by workman contravening the facts taken in written statement as reiterating the facts as stated in claim petition.

6. Parties were given opportunity to lead evidence.

7. The workman Niaz Mohd. has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A and has been cross-examined by the learned law officer of management.

8. The management has filed affidavit of N.M. Jain, Sub-Divisional Officer, Sub- Division BBMB Sunder Nagar, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned counsel of workman.

9. While arguing the case, learned Law Officer for the management contended that initially Beas Control Board was constituted in the year 1960. BCB was constituted in the year 1966 and all the projects were transferred from Beas Control Board to BCB in the year 1966 thereafter as per Section 79 of the Punjab Re-organisation Act, BMB was constituted for administrative, maintenance and operation of various works as mentioned in Section 79 itself. Section 80(6) of the Punjab Re-organisation Act provides that BMB constituted under Section 79 of the Act shall be re-named as BBMB when any of the components of the Beas Project has been transferred under sub-section 5 and the BCB shall cease to exist when all the component of the Beas Project have been so transferred. All the projects under BCB were completed in the year 1984 and BCB ceased to exist in 1984. Present workman was employed as work charged employee **on 27.11.1965** and was retrenched on **28.08.1978**. All similar work charged employees including the present workman was engaged by the BCB which ceased to exist in the year 1984 therefore, the workmen cannot be termed as the employees of the BBMB because there does not exist BCB which was his parent department. Moreover, the Hon'ble Supreme Court in the case titled as ***Jaswant Singh and another Vs. Union of India & Anr., 1979 SCC 440*** has held that work charged employees were bound by the settlement dated June 28, 1977 effected by the management and also by the award 2-C of the year 1971 before Sh. H.R. Sodhi, Presiding Officer, CGIT-Chandigarh between workman and employees of the Beas Construction Board, Sunder Nagar and published in the gazette on 15.06.1974 of the Govt. of India.

10. So far as the claim of the workman regarding re-employment after retrenchment on 28.08.1978 is concerned, workman was not entitled for re-instatement as in a case under reference no.2-C of 1971 decided by Sh. H.R. Sodhi, the then Presiding Officer, CGIT-Chandigarh, it was held that management in order to establish an industrial pleas and to secure the work charge employees after completing the work can engage after completion of project at any time within 6 months for the maintenance of staff for project of any work if it is required to those work charged employees in order to seniority who have put 10 years of service. The relevant portion of para is reproduced as below:

> ***"It is accordingly, directed that at the time of completion of the Project or at any other time within six months thereof for the maintenance staff for the Project or any of its Works if it is required to be recruited or transferred from any department of the State Governments or of the Central Government, the offer shall first be made to the work-charged employees in order of their seniority who have put in 10 years' continuous service or more under the Board in that category or trade where the vacancy occurs subject to the medical fitness of such workmen. The scale of wages as applicable to the workmen will not, however, be disturbed to their prejudice nor their continuity of service affected*** Because the present workmen had not completed 10 years of service so they are not entitled for re-employment. Learned representative for the management further contended that in this case workmen were retrenched on 28.08.1978 after receiving due retrenchment compensation etc. and now they are claiming re-employment under Section 25-H of the Act and their claim is hopelessly time barred as they have filed the present claim petition on 20.07.2005. To support this view he has placed reliance in the case titled as ***Chief Engineer Ranjit Sagar Dam & Anr. Vs. Sham Lal, AIR 2006, Supreme Court 2682,*** wherein in identical matters Court has not entertained writ petition due to inordinate delay. In the present case there is a delay of about 27 years. He also relied upon the case titled as ***Ram Chand Vs. The BBMB and another, CWP no.2787 of 2018, decided on 03.12.2018***(Annexure R-4) where the Hon'ble Himachal Pradesh High Court has held that dispute if any ought to be raised within a reasonable period as the ID Act does not prescribed time limit for referring such dispute. In the present case workman was engaged as Beldar in the year 1965 and was discharged on 28.08.1978 and he has sought re-employment after 40 years which was held to be highly time barred. Thus, he contended that claim of workman is time barred. Workman was discharged on 28.08.1978 and thereafter he filed present claim before the Labour Conciliation Officer on 01.12.2005.

11. While arguing the case, learned AR for the workman contended that in this case workman was discharged on 28.08.1978 due to reduction in strength and he was issued discharge certificate by Sub Divisional Officer, BBMB Sundernagar. He referred to Section 25-H of the ID Act which provides re-employment of retrenched workman. He further has drawn the attention of the Court towards the statement of the workman. He was required to be adjust in

view of under Section 25-G of the Act by the management Discharge Certificate was issued by the Management. He was not given any employment. While arguing further, learned AR for the workman referred to Rule 77 and 78 of the Industrial Dispute Central Rule 1957(hereinafter called Industrial Rule). Rule 77 provides maintenance of seniority list of workman and it states that before any worker is retrenched the appellant-establishment is required to place on the notice board the seniority list of all the workmen who were to be retrenched but nothing has been done in this regard before retrenchment of the present worker. She also referred to Rule 78 which provides that as and when any vacancy incurred then retrenched workmen were required to be given registered notice but nothing was done by the management. Moreover, question of limitation does not arise as no limitation period has been prescribed under the Act for seeking relief under Clause (d) of Sub-Section (1) of Section 10 of the ID Act. Learned AR for the workman further contended that even reference made by the Government dated 07.07.2005 was challenged by the management in the Hon'ble Punjab & Haryana High Court vide Writ Petition No.3100 of 2006 and their writ petition was dismissed by the Hon'ble High Court on 07.05.2007. Even SLP filed against the order dated 07.05.2007 was upheld by the Hon'ble Supreme Court in SLP No.16979/2007 dated 08.07.2014.

12. I have given due consideration to the arguments advanced by the learned AR for the workman and also for the management.

13. The management relied upon mainly in this case on the case titled as ***Jaswant Singh and another(supra),*** which is very material for decision of this case. The said judgment deals with two types of petitioners. First type of petitioners were employed by the BCB on purely temporary basis and they had also given written undertaking confirming the term of their appointment. The BCB appointed the first type of petitioners on ad hoc basis with a clear understanding that they will have no right to be retained in service after the completion of the Beas Project. They are Engineers, Section Officer, Accounts Clerk, Teacher etc. and they have claimed their parity with other employees who belonged to the services of the Punjab, Haryana and Rajasthan Governments and who were serving on deputation in connection with the works of the BhakraNangal Scheme.

14. In respect of these employees, it was held as follow:-

> ***"To sum up, we are of the opinion that the petitioners are employees of the Central Government. Their conditions of service will be primarily governed by the terms of their appointment but, if they are entitled to the benefit of any of the rules of the Central Civil Services (Temporary Service) Rules 1965, they may make representations in that behalf to the appropriate authorities. It is, however, not possible for this Court to grant to the petitioners any of the reliefs claimed by them as arising out of the provisions of the aforesaid rules, including the relief by way of a declaration that they shall be deemed to be in quasi-permanent service under rule 3. We are further of the opinion that the petitioners have no right to be transferred to the services of the Bhakra Management Board, now re-named as the Bhakra Beas Management Board. Lastly, the proposed retrenchment of the petitioners does not offend against the guarantee of equality contained in articles 14 and 16 of the Constitution, since the petitioners and the Deputationists belong to two different and distinct classes."***

15. As regards, second type of employees i.e. work charged employees the judgment deals in Para 41, 42, 43, 44, 45, 46 and 47 which read as follow:-

> ***"41. A work-charged establishment broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the work.***
>
> ***42. The entire strength of labour employed for the purposes of the Beas Project was work-charged. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. They do not get any relief under the Payment of Gratuity Act nor do they receive any retrenchment benefits or any benefits under the Employees State Insurance Schemes.***
>
> ***43. But though the work-charged employees are denied these benefits, they are industrial workers and are entitled to the benefits of the pro- visions contained in the Industrial Disputes Act. Their rights flow from that special enactment under which even contracts of employment are open to adjustment9 and modification. The work-charged employees, therefore, are in a better position than temporary servant like the other petitioners who are liable to be thrown out of employment without any kind of compensatory benefits.***
>
> ***44. The record of Writ Petition No. 4505 of 1978 shows that offers of alternative employment were made to the work- charged employees and many of them have accepted those offers. The rule of 'last come, first go' has also been consistently adopted while retrenching the work-charged employees. In fact the work-charged employees possess a unique right as industrial employees since, by reason of section 25J(1) of the Industrial Disputes Act, the provisions of Chapter VA, "Lay-off and Retrenchment", have***

effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing orders) Act, 1946.

45. There were in all about 36000 work-charged employees working on the Beas Project. Out of them, about 26000 have already accepted retrenchment compensation under the settlement arrived between the workmen and the management in the conciliation proceedings held by the Regional Labour Commissioner (Central), New Delhi, under section 12 of the Industrial Disputes Act, 1947. All the 12 unions of which the work-charged employees are members were parties to the said conciliation proceedings. By reason of section 18(3)(d) of the Industrial Disputes Act, a settlement arrived at in the course of a conciliation proceeding is binding on all persons who were employed in the establishment to which the dispute relates, whether they were employed on the date of the dispute or subsequently. In Ramnagar Cane and Sugar Co. Ltd. v. JatinChakravorty and ors., it was held by this Court that it is not even necessary, in order to bind the work men to the settlement arrived at before the conciliator, to show that they belonged to the union which took part in the conciliation proceedings, since the policy underlying section 18 of the Act is to give an extended operation to such settlements. In the instant case, all the 12 unions which represented the workmen on the work-charged establishment were parties to the conciliation proceedings. The settlement will therefore bind all the work-charged employees.

46. Apart from the settlement in the conciliation proceedings, an award was made by the Industrial Tribunal, Central, Chandigarh, in Reference No. 2-C of 1971, in an industrial dispute between the work-charged employees of the Beas-Sutlej Link Project, Sundernagar, with which we are concerned, and the management. Under that award, as stated in the award itself, a consent formula was evolved to which the workmen "virtually agreed". The benefits which flow- to the work- charged employees under the aforesaid award dated May 15, 1974, have been accepted by almost all the work- charged employees, involving a burden of about Rs. 3 crores on the employers.

47. Since the work-charged employees are bound by the settlement dated June 28, 1977 effected between them and the management in the conciliation proceedings and since they are also bound by and have accepted benefits under the consent award dated May 15, 1974 they are not entitled to any rights apart from those flowing from the aforesaid settlement and the Award. SLP No.1246 of 1979 which is filed to challenge the Award and C.M.P. No.2077 of 1979 which is filed for condonation of the delay of over four and half years caused in filing the SLP shall have to be dismissed."

16. Thus, from the above observation of Supreme Court it is clear that work charged employees are engaged on a temporary basis and their appointments are made for the specified work and their service comes to an end on the completion of work for the sole purpose of which they are employed.

17. Para 43 provides that work charged employees are industrial worker and entitled to the benefit of the provisions contained under the Industrial Disputes Act. Their rights flow from that special enactment under which even contracts of employment are open to adjustment and modification. Para 45 as reproduced above further provides that in the conciliation proceeding it has been held that there were about 36000 work charged employees working on Beas Project out of them 26000 has already accepted retrenchment compensation under the settlement arrived between the workmen and the management in the conciliation proceedings held by the Regional Labour Commissioner(Central), New Delhi under Section 12 of the ID Act. The said settlement is binding on all the work charge employees who are working in the establishment to which the dispute relates. In para 46 it is further stated that apart from the settlement in the conciliation proceeding an award was made by the CGIT Chandigarh in reference no.2-C in an industrial dispute between the work charged employee of the Beas Sutlej Project, Sundernagar with which we are concerned and the management. A consent formula was evolved to which the workmen virtually agreed. In the last para 47 itself specifically stated that work charged employees are bound by the settlement and award May 15, 1974 and they were entitled to rights those flowing from the settlement and award.

18. So far as the settlement executed between the work charged employees and management through unions, the same has not been produced by the management despite opportunity was given to file the same. Thus, adverse interference can be drawn against them. To support this view, reliance can be placed to the judgment of Hon'ble Punjab & Haryana High Court in case held as***2001(3) RSJ 382 Ambika Parashad Versus Punjab Urban Planning and Development Authority Chandigarh and Another*** **wherein it has been** held **"that respondent has not produced record in the Labour Court to prove that Workman has not completed 240 days of service though application was submitted by the Workman for production of record held that a person in possession of the best evidence has to produce the same, otherwise adverse inference can be drawn against the said party".** In this case also as per order dated 01.05.2024 of this Tribunal. Respondent were asked to produce the settlement arrived between the 12 union of the work charged employee and management under Section 12 of ID Act before the Regional Labour Commissioner, New Delhi and all the work charged employee were bound by the said settlement. However, despite of availing 2-3 opportunities i.e. 20.05.2024, 20.06.2024 and 09.07.2024 the said policy was not produced and as such adverse inference can be drawn against the management in view of the above law.

19. As regards award passed by Central Govt. Industrial Tribunal, Chandigarh, the relevant claim of the work charged employees was regarding their regularization services and the finding given by the Tribunal is as follow:-

"Regulation of Services of the workcharged employees.

It is an un-disputed fact that the entire strength of labour as employed in the Project is workcharged. The institution of workcharged establishment is not only necessary but sometime unavoidable. These workmen are engaged on temporary basis and their services are utilized for the execution of a specified work for which they may be suited. From the very nature of employment the services of such workman automatically come to an end on the completion of the work. A workcharged employee does not get any relief under the Payment of Gratuity Act nor is he benefitted by the employees state Insurance Scheme. He does not indeed enjoy any retiral benefits. Before partition of the country in 1947 it was not usual to have project, construction of which required a number of years to complete but after constituting ourselves into a democratic Republic and the Government having taken in hand five year plans for development of the country there are various schemes involving the construction of works for a period extending over several years as is the case of the instant Project. It commenced in 1962 and more than 12 years having passed the completion might take another few years. In such situation it seems reasonable and fair that a workman who has, like a regular employee, spent the part of his life ranging from 5-10 years upto 20 year, should not be thrown on the road and must be assured some benefits as are available to regular staff. The other aspect of the matter is that the employer could not compelled to retain workcharged employees after the work for which the latter had been engaged is completed, as after all, he was employed before a particular job and the employer, be it the Government or any of its public undertakings, cannot taken upon itself the responsibility of that workman for all time to come. It can be well argued that such a workmen should feel happy and content that instead of remaining un-employed be got employment for a long time.

To assure Industrial peace and economic justice to such class of workmen some balance has in my opinion to be stuck between the two extremes. It is the duty of the State under the Directive Principles enunciated in part 4 of the constitution to secure and protect that social order in which justice, social and economic could be had by all institutions of national life. I fell that it is equally the duty of an adjudicator of industrial disputes charged with the duty of administering social justice to be guided by the fundamentals contained in this chapter though he has to bear In mind the limits of the economic capacity of the employer and Endeavour must have ever be made to secure work for every citizen do in our present economy. It is not possible to immediately achieve that object. The workman employed by the respondent management are drawn from different states out of which I am informed about 8/10 thousands are from Punjab about 22000 from Himachal Pradesh and the remaining from the states of Rajasthan and Haryana. Some of the workmen are from U.P and Bihar and a handful from Kerala. The board hasby and large been consistently following the Punjab pattern in the matter of wage structure, revision thereof from time to time and grant of dearness allowance. It is only with regard to categories not appearing in the common Schedule of Rates prepared by the erstwhile United State of Punjab that the board took its independence decisions on the recommendations of its own standing committee.Even Himachal Pradesh Government generally followed the Punjab policy.The state government of Punjab in its wisdom, and I should say rightly has declared that the services of work charged employees in building and roads branch who had worked for 10 years or more would stand regularized in the sense that the workmen would be treated at par with those in the regular service of the state government.The benefit of this announcement was afterwards extended to the employees of its irrigation branch as well at the workman who held from Punjab continue to stay in their parents state the services of those who had put in 10 years or more would have been regularized the respondent management too in pursuance of its policy to follow the Punjab pattern might have regularized the services of at least of those workmen who had come from Punjab but any such course would have created awkward situation as the workmen from other States could not be discriminated in this respect.Moreover financial implications and other complications are involved.

In such circumstances stated aboveI would have directed that the services of those of the workman who have been continuously employed for more than 10 years should be regularized. But the other problems arising from such a direction including financial impact on the employer cannot be lost sight of The Central Government through the board is only managing on behalf of the state of Punjab, Rajasthan Haryana and Himachal Pradesh who are partners in the venture.Several aspects of the question were discussed with the workmen and the management in the course of arguments and a formula evolved to which the workman virtually agreed and I feel that such a solution as stated hereunder is quite just to all the parties provided it is work out, honestly stated. No doubt,what is referred to me is the matter of regularization of the services of work charge employees, but the directions that I am issuing in my opinion, amount to only granting lesser relief than claimed by the workmen. The management can also have no grievance if it wants industrial peace and is anxious to secure

employment to the work-charged employees after the completion of the work. It is accordingly, directed that at the time of completion of the Project or at any other time within six months thereof for the maintenance staff for the Project or any of its Works if it is required to be recruited or transferred from any department of the State Governments or of the Central Government, the offer shall first be made to the work-charged employees in order of their seniority who have put in 10 years' continuous service or more under the Board in that category or trade where the vacancy occurs subject to the medical fitness of such workmen. The scale of wages as applicable to the workmen will not, however, be disturbed to their prejudice nor their continuity of service affected. The workmen have expressed an apprehension that near the completion of the Project trades of some of them might be changed so that it could be said that a suitable workman needed for a particular job was not available and an outsider was therefore necessary to be employed. To protect the workmen against this possible denial of their rights it is further directed that category or trade of no workman shall be changed within one year preceding the completion of the Project without his consent in writing and that if any such change without consent is made it will have no consequence inasmuch as such a workman will be entitled to the job of his earlier trade provided the vacancy relates to that trade. As regards those of the workmen who cannot be absorbed on the regular maintenance staff. I have no reason to doubt that the State Government who are beneficiaries under the Project and also the Central Government will make every reasonable effort to get them re-employed at any other Project or work whether in any one of these States or in any other part of the country where there is a need for workmen of those trades."

20. A perusal of aforesaid findings made it ample clear that the order has been passed by the then learned Presiding Officer, CGIT, Chandigarh to maintain industrial peace and to secure employment to the work charged employees after the completion of the work and it was also held by the learned CGIT thatState Govt. who are beneficiary under the project and the Central Govt. will make every reasonable effort to get those workmen re-employed at any other project or work whether in any one of these States or in any other part of the country where there is a need of workmen of those trades.

21. Admittedly, in this case, no effort was made by the respondent to give any employment after the retrenchment of the workmen and even there is non-compliance of Rules 77 and 78 of Industrial Rules. The same are reproduced below:

***77. Maintenance of seniority list of workmen**. -The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated to be arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.*

***78. Re-employment of retrenched workmen. -** (1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies by registered post to every one of all the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time thereafter:*

Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the senior-most retrenched workmen in the list referred to in rule 77 the number of such senior-most workmen being double the number of such vacancies:

Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen:

Provided also that if a retrenched workman, without sufficient cause being shown in writing to the employer, does not offer himself for re-employment on the date or dates specified in the intimation sent to him by the employer under this sub-rule, the employer may not intimate to him the vacancies that may be filled on any subsequent occasion.]

(2) Immediately after complying with the provisions of sub-rule (1), the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under that sub-rule:

Provided that the provisions of this sub-rule need not be complied with by the employer in any case where an intimation is sent to every one of the workmen mentioned in the list prepared under rule 77.

22. However, the present work charged employee and other work-charged employees have been retrenched long back and even at the stage it is impossible to re-employe them. However, certainly in respect of workcharged employees present Respondent was directed by the Hon'ble Supreme Court in Judgment of Jaswant Singh (Supra) to

give benefits in terms of settlement and award dated 15.05.1974. The main purpose of Hon'ble Supreme Court and Ld. CGIT Chandigarh was to rehabilitate to some extent the work charged employees and restore peace and congenial atmosphere that is why Ld. CGIT Chandigarh had given directions to all state to re-employe them. Thus, it does not lie in the mouth of present Respondent that no relief can be granted against present Respondent as petitioners are not their employees.

A. So far as this argument of Ld. AR of the management that those work charged employees only who have completed 10 years of service were required to be adjusted within 6 months from their retrenchment is concerned, the same is devoid of merit as no effort was made by the management to adjust the work charged employees. Moreover, no documentary evidence has been produced that any effort was made to adjust the workman after his retrenchment. Further, Ld. CGIT Chandigarh in its last lines concluded as under:-

> ***"As regards those of the workmen who cannot be absorbed on the regular maintenance staff. I have no reason to doubt that the State Government who are beneficiaries under the Project and also the Central Government will make every reasonable effort to get them re-employed at any other Project or work whether in any one of these states or in any other part of the country where there is a need of workmen of those trades"***
>
> Nothing has come on record that above directions were complied with.

23. Moreover, in the absence of production of settlement between work charged employees and management, it cannot be interfered what were the terms and conditions in the said settlement. Further, CGIT Chandigarh has fixed ten years time and accrual of vacancy within six months keeping in view the facts and circumstances of the case and has evolved his own formula to bring peace and harmony between work charged employees and management but it cannot be said to be a universal policy in the absence of production of settlement between work charged employees and management. However, no effort was made to adjust the petitioners in view of order of CGIT.

24. As regard, this contention of learned AR of management that petitioners were not the employees of the BBMB but were the employees of BCB, the same is devoid of merit as Discharge certificate was issued by the BBMB. Moreover, as per respondent Beas Control Board was constituted in the year 1960. BCB was constituted in the year 1966 and all the projects were transferred from Beas Control Board to BCB in the year 1966 thereafter as per Section 79 of the Punjab Re-organisation Act, BMB was constituted for administrative, maintenance and operation of various works as mentioned in Section 79 itself. Section 80(6) of the Punjab Re-organisation Act provides that BMB constituted under Section 79 of the Act shall be re-named as BBMB when any of the components of the Beas Project has been transferred under sub-section 5 and the BCB shall cease to exist when all the component of the Beas Project have been so transferred. All the projects under BCB were completed in the year 1984 and BCB ceased to exist in 1984. When all work of BCB stands transferred to BBMB so it cannot be said that BBMB is separate identity than BCB. Rather BCB has merged in BBMB. Moreover, Hon'ble Supreme Court in Jaswant Singh case(supra) in respect of work charged employees has no where stated that relief can be sought by work charged employees only against the BCB. So contention of Ld. AR of the management that BCB and BBMB are two separate entities is devoid of merit.

25. So far this argument of Law Officer for the respondent that the case is hopelessly time barred is concerned, the same is again devoid of merits as there was non-compliance of Rule 77 and 78 of Industrial Rules which has been reproduced above. Moreover, there is no limitation period prescribed for filing a reference. Moreover, reference was received in the year 2005 and thereafter, several rounds of litigations have taken place. So far as case laws on the point of limitation the same are not attracted in the present case as there was no compliance of Judgment of Jaswant Singh case (Supra).

26. However, it is added that workman was allowed terminal benefits as admitted by him. Moreover, it is also not case of the petitioner that there is breach of Section 25 F of the Act.

27. Further, there was non-compliance of Jaswant Singh Case (Supra), Reference No.2C of 1971 and Rule 77 & 78 of Industrial Rules and in this case it would be highly difficult to re-employe the workman. The only remedy left is to compensate the workman in term of money.

28. Keeping in view the fact and circumstances of the present case and other connected case of similar nature the following scheme of compensation is deemed fit by this Tribunal:

i. Work charged employee who has completed 5 years of service shall be entitled for Rs.50,000/- along with interest @9% per annum as compensation from the date of moving of application till the realization of amount.

ii. Work charged employee who has completed less than 5 years but more than 1 year would be entitled Rs.25,000/- along with interest @9% per annum from the date of moving of application till the realization of amount.

iii. Those employees who have not completed 1 year will not be entitled for any compensation in the present case.

The present workman (being represented by his Legal Heirs) was employed on 27.11.1965 and was retrenched on 28.08.1978. There is no denial of period of working of Workman by the Management in its reply to claim. Hence, it is held that Workman has worded from 27.11.1965 to 28.08.1978 above 9 years and 10 months (more than 5 years) so his Legal Heirs are entitled of Rs.50,000/- along with interest @9% per annum from the date of moving the application till its realization.

29. The reference is answered accordingly and stands disposed off.

30. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

KAMAL KANT, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2024

का.आ. 1872.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स इंस्टिट्यूट ऑफ़ मिनरल्स एंड मैटेरियल्स टेक्नोलॉजी; मेसर्स बॉम्बे इंटेलिजेंस सिक्योरिटी (इंडिया) लिमिटेड; मेसर्स इंडस्ट्रियल सिक्योरिटी एंड अलाइड सर्विसेज प्राइवेट लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री प्रमोद प्रधान** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुबनेश्वर, पंचाट (रिफरेन्स न. 47/2021)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.09.2024 को प्राप्त हुआ था।

[फा. सं. जेड-16025/04/2024-आईआर(एम)-126]

दिलीप कुमार, अवर सचिव

New Delhi, the 27th September, 2024

S.O. 1872.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 47/2021)** of the **Central Government Industrial Tribunal cum Labour Court, Bhubaneswar** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Institute of Minerals and Materials Technology; M/s Bombay Intelligence Security (India) Limited; M/s Industrial Security and Allied Services Private Limited** and **Shri Pramod Pradhan** which was received along with soft copy of the award by the Central Government on 27.09.2024.

[F. No. Z-16025/04/2024-IR(M)-126]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Sri Dinesh Kumar Singh,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 47/2021

Date of Passing Order –19th July 2024

Between:

1. The Director, M/s. Institute of Minerals & Materials Technology, Bhubaneswar.
2. The Director, M/s. Bombay Intelligence Security (India) Ltd., 101, Omega House, Hiranandini Gardens, Powai, Mumbai.

3. The Director, M/s. Industrial Security & Allied Services
Pvt. Ltd., F-3-F-5, Indradhanu Market, IRC Village,
Bhubaneswar.

… 1st Party-Managements.

(And)

Shri Pramod Pradhan,
S/o. Trinath Pradhan, Vill/Po. Gamundi,
Dist. Ganjam – 761 133.

… 2nd Party-Workman.

Appearances:

None. … For the 1st Party-Managements.

None. … For the 2nd Party-Workman.

O R D E R

In the present case, a reference was received from the office of the Deputy Chief Labour Commissioner (Central), Bhubaneswar vide order No. 8(3)/2020-B.IV/ADJ/21/B.I, dated 29.07.2021 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 for adjudication of a dispute, under the following schedule:-

"Whether the action of M/s. Bombay Intelligence Security (India) Ltd., the contractor of the Management of M/s. Institute of Minerals Materials Technology, Bhubaneswar, terminating the service of Sri Pramod Pradhan (Security Guard) without retrenchment benefits is just, fair and legal? If not, to what relief the concerned workman is entitled to?"

2. In the reference order, the Deputy chief Labour Commissioner (Central), Bhubaneswar commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to each one of the opposite parties involved in the dispute.

3. Despite directions so given, no statement of claim is received from the 2nd party-workman.

4. On receipt of the above reference, notice was sent to the 2nd Party-Workman on 20.12.2021 and on dated 03.04.2023 for appearance and for filing of statement of claim. Neither the postal article sent to the 2nd Party-Workman, referred to above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred to above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the 2nd Party-Workman. Despite service of the notice, the 2nd Party-Workman opted to abstain away from the proceedings. No claim statement was filed on its behalf. Thus, it is clear that the 2nd Party-Workman is not interested in adjudication of the reference on merits.

5. Since the 2nd Party-Workman has neither filed statement of claim nor has led any evidence so as to prove its cause against the Management, it is presumed that there is no claim of workman against the Management.

6. In view of such, no claim Order is passed by this Tribunal.

7. Let this order be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2024

का.आ. 1873.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **सेलेबी एयरपोर्ट सर्विसेज इंडिया प्राइवेट लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **सेलेबी एम्प्लाइज यूनियन** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली, पंचाट (रिफरेन्स न. 160/2023)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.09.2024 को प्राप्त हुआ था।

[फा. सं. एल-11011/10/2023-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 27th September, 2024

S.O. 1873.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 160/2023)** of the **Central Government Industrial Tribunal cum Labour Court-1, New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **CELEBI Airport Services India Private Limited** and **CELEBI Employees Union** which was received along with soft copy of the award by the Central Government on 27.09.2024.

[F. No. L-11011/10/2023-IR(M)]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1, NEW DELHI.

ID No. 160/2023

The General Secretary,
CELEBI Employees Union (Regd.),
BTR Bhawan, 13-A, Rouse Avenue,
New Delhi-110002.

Workman…

Versus

CELEBI Airport Services India Private Limited,
(Formerly CELEBI Ground Handling Private Limited)
IGI Airport, New Delhi-110037.

Management…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No-L-11011/10/2023-IR(M)) dated 03.07.2023 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"*Whether the claim of CELEBI Employees Union (Regd.) vide their representation dated 14.09.2017 against the management of CELEBI Airport Services India Private Limited (Formerly CELEBI Ground Handling Private Limited), IGI Airport, New Delhi for the 10% wage hike since the April, 2017 as per the terms of settlement dated 21.10.2015 is proper, legal and justified? If yes, to what relief is the disputant union entitled and what directions, if any, are necessary in this regard?"*

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favor of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : 10.09.2024 Justice VIKAS KUNVAR SRIVASTAVA**,** Presiding Officer

नई दिल्ली, 27 सितम्बर, 2024

का.आ. 1874.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **सेलेबी एयरपोर्ट सर्विसेज इंडिया प्राइवेट लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **सेलेबी एम्प्लाइज यूनियन** के बीच

अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली, पंचाट (रिफरेन्स न. 184/2023)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.09.2024 को प्राप्त हुआ था।

[फा. सं. एल-11011/26/2023-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 27th September, 2024

S.O. 1874.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 184/2023)** of the **Central Government Industrial Tribunal cum Labour Court-1, New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **CELEBI Airport Services India Private Limited** and **CELEBI Employees Union** which was received along with soft copy of the award by the Central Government on 27.09.2024.

[F. No. L-11011/26/2023-IR(M)]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1, NEW DELHI.

ID No. 184/2023

The General Secretary,
CELEBI Employees Union (Regd.),
BTR Bhawan, 13-A, Rouse Avenue,
New Delhi-110002.

Workman…

Versus

CELEBI Airport Services India Private Limited,
(Formerly CELEBI Ground Handling Private Limited)
IGI Airport, New Delhi-110037.

Management…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No-L-11011/26/2023-IR(M)) dated 17.07.2023 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"i) Whether the claim of CELEBI Employees Union (Regd.) that the action of the management of CELEBI Airport Services India Private Limited in not inviting and holding discussion with the Celebi Employees Union on the charter of demands dated 02.04.2018 (Annexure-2) and instead signing the settlement dated 01.04.2018 with a committee of workmen is illegal and/or unjustified, is proper and legally justified? If yes, to what reliefs are the disputant Union entitled and what directions, if any, are necessary in this regard?

ii) If the above issue at S.No. 1 is answered in favour of the disputant union, then whether the demands as raised in charter of demand dated 02.04.2018 (Annexure-2) to the management are proper, legal and justified? If yes, to what reliefs are the disputant Union entitled and what directions, if any, are necessary in this regard?"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal

services remained unserved in the period, referred above. Therefore, every presumption lies in favor of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : 10.09.2024 Justice VIKAS KUNVAR SRIVASTAVA, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2024

का.आ. 1875.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स एयरपोर्ट ऑथोरिटी ऑफ़ इंडिया; मेसर्स स्पाइस जेट लिमिटेड; मेसर्स सन शाइन इंटरप्राइजेज** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री धर्मेंद्र कुमार** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली, पंचाट (रिफरेन्स न.- 229/2017)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.09.2024 को प्राप्त हुआ था।

[फा. सं. जेड-16025/04/2024-आईआर(एम)-127]

दिलीप कुमार, अवर सचिव

New Delhi, the 27th September, 2024

S.O. 1875.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 229/2017)** of the **Central Government Industrial Tribunal cum Labour Court-1, New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Airports Authority of India; M/s Spice Jet Limited; M/s Sun Shine Enterprises** and **Shri Dharmendra Kumar** which was received along with soft copy of the award by the Central Government on 27.09.2024.

[F. No. Z-16025/04/2024-IR(M)-127]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI NO.1 NEW DELHI.

ID.No. 229/2017

Sh. Dharmendra Kumar S/o Sh. Hira Lal,
Through Hindustan Engineering and General Mazdoor Union (Regd.)
D-2/24, Sultanpuri,
Delhi.

…..Workman

Versus

1. M/s Airport Authority of India,
   Rajiv Gandhi Bhawan,
   New Delhi- 110005.
2. M/s Spice Jet Ltd.,
   Domestic Interstate Airport Terminated No.1 D,
   Palam Airport, New Delhi- 110037.
3. M/s Sun Shine Enterprises,
   49, Ground Floor,
   Kailash Colony Metro Station Sant Nagar.,
   New Delhi-110049.

…….Management

AWARD

1. This is an application under Section 2-A of the I.D. Act whereby, the applicant made prayer that his termination from the service on 18.11.2014 by the management which be declare illegal and unjustified and he be reinstated with full back wages. He has not been provided any legal facilities. When the workman went to join his job he was illegally terminated form his service on 18.11.2014 without any rhyme or reason and without conducted any domestic enquiry by the management. He has initiated the conciliation proceeding but, no result. Hence, he had filed the present claim petition.

2. Management No.2 is not appearing since long therefore they are proceeded ex-parte. However, Management no.1&3 appeared and filed the rebuttal written statement. After that, rejoinder was filed and issues were framed. And after that, case was listed for claimant listed on 16.05.2024. Thereafter, the AR for the claimant informed that the claimant did not contact him for a long time. Also, the claimant is not appearing in the tribunal to substantiate his claim.

3. Hence, in these circumstances this tribunal has no option except to pass the no dispute award. No dispute award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Let a copy of this Award be sent for publication as required under Section 17 of Act.

Dated : 13.09.2024 Justice VIKAS KUNVAR SRIVASTAVA, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2024

का.आ. 1876.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स एयरपोर्ट ऑथोरिटी ऑफ़ इंडिया; मेसर्स स्पाइस जेट लिमिटेड; मेसर्स सन शाइन इंटरप्राइजेज** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री दीपक कुमार** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली, पंचाट (रिफरेन्स न. 230/2017)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.09.2024 को प्राप्त हुआ था।

[फा. सं. जेड-16025/04/2024-आईआर(एम)-128]

दिलीप कुमार, अवर सचिव

New Delhi, the 27th September, 2024

S.O. 1876.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 230/2017)** of the **Central Government Industrial Tribunal cum Labour Court-1, New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Airports Authority of India; M/s Spice Jet Limited; M/s Sun Shine Enterprises** and **Shri Deepak Kumar** which was received along with soft copy of the award by the Central Government on 27.09.2024.

[F. No. Z-16025/04/2024-IR(M)-128]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI NO.1 NEW DELHI.

ID.No. 230/2017
Sh. Deepak Kumar S/o Sh. Rajindra Kumar,
Through Hindustan Engineering and General Mazdoor Union (Regd.)
D-2/24, Sultanpuri,
Delhi.

…..Workman

Versus

1. M/s Airport Authority of India,
Rajiv Gandhi Bhawan,
New Delhi- 110005.

2. M/s Spice Jet Ltd.,
Domestic Interstate Airport Terminated No.1 D,
Palam Airport, New Delhi- 110037.

3. M/s Sun Shine Enterprises,
49, Ground Floor,
Kailash Colony Metro Station Sant Nagar.,
New Delhi-110049.

…….Management

AWARD

1. This is an application under Section 2-A of the I.D. Act whereby, the applicant made prayer that his termination from the service on 13.03.2014 by the management which be declare illegal and unjustified and he be reinstated with full back wages. He has not been provided any legal facilities. When the workman went to join his job he was illegally terminated form his service on 13.03.2014 without any rhyme or reason and without conducted any domestic enquiry by the management. He has initiated the conciliation proceeding but, no result. Hence, he had filed the present claim petition.

2. Management No.2 is not appearing since long therefore they are proceeded ex-parte. However, Management no.1&3 appeared and filed the rebuttal written statement. After that, rejoinder was filed and issues were framed. And after that, case was listed for claimant listed on 16.05.2024. Thereafter, the AR for the claimant informed that the claimant did not contact him for a long time. Also, the claimant is not appearing in the tribunal to substantiate his claim.

3. Hence, in these circumstances this tribunal has no option except to pass the no dispute award. No dispute award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Let a copy of this Award be sent for publication as required under Section 17 of Act.

Dated : 13.09.2024 Justice VIKAS KUNVAR SRIVASTAVA**,** Presiding Officer

नई दिल्ली, 27 सितम्बर, 2024

का.आ. 1877.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स एयरपोर्ट ऑथोरिटी ऑफ़ इंडिया; मेसर्स स्पाइस जेट लिमिटेड; मेसर्स सन शाइन इंटरप्राइजेज** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री दिनेश कुमार** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली, पंचाट (रिफरेन्स न. 231/2017)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.09.2024 को प्राप्त हुआ था।

[फा. सं. जेड-16025/04/2024-आईआर(एम)-129]

दिलीप कुमार, अवर सचिव

New Delhi, the 27th September, 2024

S.O. 1877.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 231/2017)** of the **Central Government Industrial Tribunal cum Labour Court-1, New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Airports Authority of India; M/s Spice Jet Limited; M/s Sun Shine Enterprises** and **Shri Dinesh Kumar** which was received along with soft copy of the award by the Central Government on 27.09.2024.

[F. No. Z-16025/04/2024-IR(M)-129]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI NO.1 NEW DELHI.

ID.No. 231/2017
Sh. Dinesh Kumar S/o Sh. Hira Lal,
Through Hindustan Engineering and General Mazdoor Union (Regd.)
D-2/24, Sultanpuri,
Delhi.

…..Workman

Versus

1. M/s Airport Authority of India,
Rajiv Gandhi Bhawan,
New Delhi- 110005.

2. M/s Spice Jet Ltd.,
Domestic Interstate Airport Terminated No.1 D,
Palam Airport, New Delhi- 110037.

3. M/s Sun Shine Enterprises,
49, Ground Floor,
Kailash Colony Metro Station Sant Nagar.,
New Delhi-110049.

…….Management

AWARD

1. This is an application under Section 2-A of the I.D. Act whereby, the applicant made prayer that his termination from the service on 23.11.2014 by the management which be declare illegal and unjustified and he be reinstated with full back wages. He has not been provided any legal facilities. When the workman went to join his job he was illegally terminated form his service on 23.11.2014 without any rhyme or reason and without conducted any domestic enquiry by the management. He has initiated the conciliation proceeding but, no result. Hence, he had filed the present claim petition.

2. Management No.2 is not appearing since long therefore they are proceeded ex-parte. However, Management no.1&3 appeared and filed the rebuttal written statement. After that, rejoinder was filed and issues were framed. And after that, case was listed for claimant listed on 16.05.2024. Thereafter, the AR for the claimant informed that the claimant did not contact him for a long time. Also, the claimant is not appearing in the tribunal to substantiate his claim.

3. Hence, in these circumstances this tribunal has no option except to pass the no dispute award. No dispute award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Let a copy of this Award be sent for publication as required under Section 17 of Act.

Dated : 13.09.2024 Justice VIKAS KUNVAR SRIVASTAVA**,** Presiding Officer

नई दिल्ली, 27 सितम्बर, 2024

का.आ. 1878.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स एयरपोर्ट ऑथोरिटी ऑफ़ इंडिया; मेसर्स स्पाइस जेट लिमिटेड; मेसर्स सन शाइन इंटरप्राइजेज** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री राम चन्द्र कुमार** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली, पंचाट (रिफरेन्स न. 242/2017)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.09.2024 को प्राप्त हुआ था।

[फा. सं. जेड-16025/04/2024-आईआर(एम)-130]

दिलीप कुमार, अवर सचिव

New Delhi, the 27th September, 2024

S.O. 1878.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 242/2017)** of the **Central Government Industrial Tribunal cum Labour Court-1, New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Airports Authority of India; M/s Spice Jet Limited; M/s Sun Shine Enterprises** and **Shri Ram Chandra Kumar** which was received along with soft copy of the award by the Central Government on 27.09.2024.

[F. No. Z-16025/04/2024-IR(M)-130]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI NO.1 NEW DELHI.

ID.No. 242/2017
Sh. Ram Chandra Kumar S/o Sh. Kishan Chand,
Through Hindustan Engineering and General Mazdoor Union (Regd.)
D-2/24, Sultanpuri,
Delhi.

…..Workman

Versus

1. M/s Airport Authority of India,
   Rajiv Gandhi Bhawan,
   New Delhi- 110005.

2. M/s Spice Jet Ltd.,
   Domestic Interstate Airport Terminated No.1 D,
   Palam Airport, New Delhi- 110037.

3. M/s Sun Shine Enterprises,
   49, Ground Floor,
   Kailash Colony Metro Station Sant Nagar.,
   New Delhi-110049.

…….Management

AWARD

1. This is an application under Section 2-A of the I.D. Act whereby, the applicant made prayer that his termination from the service on 31.10.2014 by the management which be declare illegal and unjustified and he be reinstated with full back wages. He has not been provided any legal facilities. When the workman went to join his job he was illegally terminated form his service on 31.10.2014 without any rhyme or reason and without conducted any domestic enquiry by the management. He has initiated the conciliation proceeding but, no result. Hence, he had filed the present claim petition.

2. Management No.2 is not appearing since long therefore they are proceeded ex-parte. However, Management no.1&3 appeared and filed the rebuttal written statement. After that, rejoinder was filed and issues were framed. And after that, case was listed for claimant listed on 16.05.2024. Thereafter, the AR for the claimant informed that the claimant did not contact him for a long time. Also, the claimant is not appearing in the tribunal to substantiate his claim.

3. Hence, in these circumstances this tribunal has no option except to pass the no dispute award. No dispute award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Let a copy of this Award be sent for publication as required under Section 17 of Act.

Dated : 13.09.2024 Justice VIKAS KUNVAR SRIVASTAVA**,** Presiding Officer

नई दिल्ली, 27 सितम्बर, 2024

का.आ. 1879.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **सेल-राईट्स बंगाल वैगन इंडस्ट्री प्राइवेट लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री सिउली चटर्जी** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, आसनसोल, पंचाट (रिफरेन्स न. 23/2023)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.09.2024 को प्राप्त हुआ था।

[फा. सं. जेड-16025/04/2024-आईआर(एम)-131]

दिलीप कुमार, अवर सचिव

New Delhi, the 27th September, 2024

S.O. 1879.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 23/2023)** of the **Central Government Industrial Tribunal cum Labour Court, Asansol** as shown in the Annexure, in the Industrial dispute between the employers in relation to **SALE-RITES Bengal Wagon Industry Private Limited** and **Shri Siuli Chatterjee** which was received along with soft copy of the award by the Central Government on 27.09.2024.

[F. No. Z-16025/04/2024-IR(M)-131]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 23 OF 2023

PARTIES: Siuli Chatterjee

Vs.

Management of SAIL-RITES Bengal Wagon Industry Pvt. Ltd.

REPRESENTATIVES:

For the Employee : Mr. Debashis Mondal, Advocate.
Mr. Tuhin Mitra, Advocate.

For the Management : Mr. Ayan Ranjan Mukherjee, Advocate.
Mr. Deep Narayan Dan, Advocate.

INDUSTRY: Steel-Railways.

STATE: West Bengal.

Dated: 27.08.2024

A W A R D

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Ministry of Labour, Government of India through the Office of the Deputy Chief Labour Commissioner (Central), Asansol, vide its Order **No. 1(4)/2023/E** dated 13.04.2023 has been pleased to refer the following dispute between the employer, that is the Management of SAIL-RITES Bengal Wagon Industry Private Limited and their employee for adjudication by this Tribunal.

S C H E D U L E

" Whether the action of the management of SAIL-RITES Bengal Wagon Industry Pvt Ltd in termination the service of Mrs Siuli Chatterjee, Senior Assistant (QA) vide termination letter dated 09/11/2020 is legal and justified? If not, to what relief Mrs Siuli Chatterjee is entitled to ? "

1. On receiving Order **No. 1(4)/2023/E** dated 13.04.2023 from the Office of the Deputy Chief Labour Commissioner (Central), Asansol, Ministry of Labour, Government of India, for adjudication of the dispute **Reference case No. 23 of 2023** was registered on 02.05.2023 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. The aggrieved employee filed her written statement on 12.06.2023 assailing the impugned order of her termination from service, issued by the General Manager (P&M), communicated through his letter No. SRBWIPL/Termination from Service/01 dated 09.11.2020.

3. The fact of the case disclosed in the written statement of the dismissed employee is that, she was a permanent employee of SAIL-RITES Bengal Wagon Industry Private Limited (hereinafter referred to as SRBWIPL) since 11.06.2020. The petitioner was appointed as an Assistant Executive at SRBWIPL by their letter No. SRBWIPL/KULTI/HR/20-21 dated 09.06.2020. Thereafter petitioner was re-designated from Assistant Executive to Executive. Considering her past performance in the company, she was promoted to the post of Executive-Secretary to the Chief Executive Officer (hereinafter referred to as CEO) by company's letter No. SRBWIPL/KULTI/HR/20-21 dated 07.09.2020. The petitioner / employee rendered unblemished service to the company with dedication and received appropriate increment in her salary.

4. Within three months the petitioner found herself in a difficult situation when K. Chandrasekar, CEO, under whom she functioned as an Executive-Secretary, started sexually abusing her and subjected her to harassment. She could not raise any complaint against the CEO before the company as she was under threat of dire consequences and termination from service, if she divulged the sexual harassment by the CEO to any person. On her protest the petitioner was degraded to lower post. It is the case of the petitioner that K. Chandrasekar tried to establish an extra-marital relationship with her and called her to his bungalow on the pretext of learning Bengali language from her. He also tried to seduce the petitioner and used social networking sites like Facebook and WhatsApp to communicate with her in order to impress her that her promotion and increment depended upon his satisfaction. When the move of the CEO to get intimate with the petitioner went in vain the employment of Mr. Soumita Chatterjee, the petitioner's husband, who was working under the principal employer through contractor was forcefully terminated.

5. The aggrieved employee tried her best to keep a distance from the CEO for which the CEO started abusing her and constantly kept her in fear of termination of service. On 05.10.2020 a letter was issued to her by the General Manager (P&M), alleging violation of service rules by her due to her engagement with a puja committee and collecting of subscription. The petitioner reciprocated to such false allegation by raising objection. The petitioner wrote to the Secretary of Post Office Para Sarbojonin Durgapuja Committee, Kulti, wanting to know why her name was incorporated in the subscription vouchers when the she was not a member of the puja committee. Ms. Indrani Gupta, Member of the committee replied to her letter, informing that due to misunderstanding her name has been incorporated in the Subscription Vouchers of the puja committee. A police complaint was lodged in this matter by her on 08.10.2020. The management of the company after having a fair explanation and documentary proof from the petitioner, on the instruction of the CEO reduced the rank of the petitioner from E1 to NE4 post and thereby reduced her pay by their letter dated 14.10.2020. Mr. Sayantan Banerjee, Manager issued a letter to the petitioner bearing No. SRBWIPL/KULTI/SAFETY SHOE/20-21 dated 07.10.2020 making whimsical accusation against the employee, alleging violation of safety rules by not wearing safety shoes in the shop floor during inspection. According to the petitioner she submitted her reply to the Manager, QA department through email on 08.10.2020, informing that shoes of her size were neither available in the company's store nor in the open market but the reply did not satisfy the CEO, who pressurize the Manager, QA, to compel the petitioner to leave her job. On 08.10.2020 the petitioner received another letter from the Deputy General Manager, QA, alleging gross violation of discipline by the petitioner. She replied through email and apologized for her mistake. It is contended that K. Chandrasekar, CEO, became vindictive towards her and harassed her physically and mentally raising frivolous allegations against her. On 09.10.2020 the petitioner was accused of violation of service rules and she defended herself against such false allegation. The management did not follow the basic rules of Departmental Enquiry and in order to fructify the deep-rooted conspiracy of the CEO, the charge of violation of service rule was levelled against her. The Deputy General Manager, Quality Assurance in his letter No. SRBWIPL/KULTI/POOR PERFORMANCE/20-21 dated 12.10.2020 accused the petitioner of poor performance in the Quality Assurance Department. On 03.11.2020 the Deputy General Manager, QA of the employer company issued another letter to the petitioner informing her that disciplinary action will be taken against her and asked her to submit explanation regarding violating the service rules due to unauthorized entry to in the factory premises without valid Gate Pass. The petitioner submitted her explanation on 03.11.2020 through email to the CEO and the General Manager, informing them as to why she entered into the premises of the factory but the employer company in an arbitrary and whimsical manner and without holding any Departmental Enquiry held the petitioner guilty of a false charge. It is stated that the petitioner was not allowed to submit any reply against the Charge Sheet to defend herself which is a clear violation of the principles of natural justice. The petitioner was then terminated from her employment through a whimsical decision of the management without giving any opportunity of hearing her and adducing evidence in her favour. It is urged that the General Manager (P&M) issued a letter of termination bearing No. SRBWIPL/Termination from Service/01 dated 09.11.2020, terminating the service of the

petitioner in an illegal and whimsical manner. The petitioner informed the entire matter to the Managing Director, SRBWIPL at Laxmi Nagar, Delhi, by lodging a complaint dated 31.12.2020. An enquiry was held over the matter on 23.02.2021 at City Centre, Durgapur, West Bengal. Petitioner received a letter dated 07.07.2022 from Ms. Sujata Savant, General Manager, UE&S, the Chairman of the Prevention of Sexual Harassment Committee (hereinafter referred to as PoSH Committee) of RITES Limited along with a copy of Enquiry Report dated 29.04.2022 held on the basis of the petitioner's complaint dated 31.12.2020 and she was informed that the management has decided to take necessary action against the respondent i.e. CEO and assistance shall be provided to her to undergo a suitable skill development programme which can help her to gain necessary expertise for future career prospects. It is contended by the petitioner that K. Chandrasekar, CEO, who subjected her to sexual harassment at her place of work was relegated to lower post as a punishment but the petitioner who was subjected to such sexual harassment and was terminated in an arbitrary manner was neither reinstated in service nor did she received any monetary compensation for the sexual harassment she suffered while working under the company. On 31.12.2020 the petitioner wrote a letter addressed to the Managing Director, SRBWIPL with a prayer for reinstating her but she received no relief. On 07.07.2022, Ms. Sujata Savant, General Manager, UE&S informed the petitioner that the guilt of K. Chandrasekar, CEO has been proved before the PoSH Committee Members and the management was asked to take necessary action against the CEO but refused to reinstate the petitioner. The petitioner thereafter approached the Deputy Chief Labour Commissioner (Central), Asansol and raised an Industrial Dispute regarding her dismissal and non-payment of back wages and compensation. The conciliation proceeding before the Deputy Chief Labour Commissioner (Central), Asansol failed and by exercising the jurisdiction of the Ministry of Labour, Government of India the Deputy Chief Labour Commissioner (Central), Asansol has referred the Industrial Dispute before this Industrial Tribunal for adjudication. The petitioner in her pleading has prayed for setting aside the order of termination issued against Siuli Chatterjee and for her reinstatement in the post of Senior Assistant, QA with back wages w.e.f. 09.11.2020.

6. The management of SRBWIPL contested the Industrial Dispute by filing their written statement on 12.06.2023. It is contended that the Industrial Dispute is not maintainable and the same is liable to be dismissed. It is their case that the petitioner's case disclosed in her written statement is replete with distorted version and suppression of truth. It is their case that SRBWIPL is a joint venture company of Steel Authority of India Limited (a Central Public Sector Undertaking under the Ministry of Steel, Government of India) and Rail India Technical and Economic Service Limited (a Central Public Sector Undertaking under the Ministry of Railways, Government of India). The company was incorporated on 30.12.2010 and as per the joint venture agreement the CEO was deputed from Rail India Technical and Economic Service Limited and the Chief Finance Officer was deputed from Steel Authority of India Limited. All other employees recruited by the company are on contractual basis and their contract period was extended time to time as per requirement of the company.

7. The contention of the management in their written statement is that, Siuli Chatterjee was appointed as Assistant, Executive on contractual basis w.e.f. 11.06.2020 for a period of three months and her appointment letter bearing No. SRBWIPL/KULTI/HR/20-21 was issued on 09.06.2020. Initially the petitioner was appointed in the Stores Department under the General Manager, MM, where her performance was not satisfactory and several complaints were received by the office regarding her poor performance which has been recorded in her Service Record. The petitioner did not have any intention to improve her efficiency. It was reported by the Departmental Head that she was not found suitable for work at the Store.

8. According to the management the petitioner was re-designated as an Executive to deal with clients. The petitioner submitted an application on 22.08.2020, requesting her transfer from Store to any office job, admitting her failure in performing job at the Store. The competent authority considered her appeal and transferred her to the office of the CEO at the same level by letter dated 22.08.2020. After completion of three months of contractual period and upon Annual Performance Appraisal Report (APAR) and the proposal dated 29.08.2020, the contract period of the petitioner was extended up to 28.02.2022 at the same level with incremental pay.

9. A Charge Sheet dated 05.10.2020 was issued to the petitioner for involving herself in collection of contribution for local puja committee at Kulti and after enquiry by the nominated committee, the petitioner was found guilty for violating company's service conduct rule and her position was reduced from E1 to NE4 with a reduction of pay of Rs. 15,000/- for her balance period of contract vide letter SRBWIPL/KULTI/HR/20-21/01 dated 14.10.2020 and she was transferred to the Quality Assurance Department as a Senior Assistant. The Manager, QA also chargesheeted her for not wearing Safety Shoes in the Shop floor and violating safety regulations. The petitioner submitted her explanation through email. The performance of the petitioner in the Quality Assurance Department was not found satisfactory and the same was recorded in the Service Record. The Deputy General Manager, QA issued a letter dated 12.10.2020 to Siuli Chatterjee regarding her poor performance. According to the management the Gate Pass of the petitioner was revoked but she entered into the factory premises in unauthorized manner and signed the Attendance Register for which a Charge Sheet dated 03.11.2020 was issued against her by the Deputy General Manager, QA and as there was no suitable explanation submitted by the petitioner, the management had no option but to terminate the petitioner from her service for gross violation of safety, discipline and unsatisfactory performance in different departments. Accordingly, a termination letter dated 09.11.2020 was issued by the competent authority. The employer adopted

appropriate procedure before issuing termination letter dated 09.11.2020. It is asserted that the opposite party/ employer is unable to reinstate the petitioner. Furthermore, the petitioner being employed on contractual basis and performed poorly, is liable to be terminated prior to completion of her tenure. According to the management the petitioner has no cause of action for initiating the Industrial Dispute and the same is liable to be rejected in limine.

10. The appropriate government in exercise of the jurisdiction vested in it under Section 10 of the Industrial Disputes Act, 1947 referred this Industrial Dispute to this Tribunal for adjudication as to the legality and justification of termination of Siuli Chatterjee from service by issuance of letter dated 09.11.2020 by the management of SRBWIPL.

11. Assailing the impugned order of termination, the aggrieved employee examined herself as Workman Witness – 1 and filed an affidavit-in-chief. She has reiterated her statements made in the written statement and produced the following documents in support of her case :

(i) Copy of the appointment letter of Siuli Chatterjee dated 09.06.2020 is produced as Exhibit W-1.

(ii) Copy of the complaint dated 31.12.2020 submitted by Siuli Chatterjee before the Managing Director, as Exhibit W-2.

(iii) Copy of the Enquiry Report of the PosH Committee dated 29.04.2022, as Exhibit W-3.

(iv) Copy of the letter 07.09.2020 posting Siuli Chatterjee as an Executive-Secretary to the CEO, as Exhibit W-4.

(v) Copy of the letter dated 05.10.2020, accusing Siuli Chatterjee of collecting puja subscription, as Exhibit W-5.

(vi) Copy of the reply of Siuli Chatterjee dated 06.10.2020 to the letter dated 05.10.2020, as Exhibit W-6.

(vii) Copy of the letter dated 03.11.2020 regarding disciplinary action for unauthorized entry in the factory premises without valid Gate Pass, as Exhibit W-7.

(viii) Copy of the letter of termination dated 09.11.2020, as Exhibit W-8.

(ix) Copy of the application of Siuli Chatterjee, addressed to the Dy. CLC(C), Asansol, as Exhibit W-9.

(x) Copy of the findings of the Conciliation Officer dated 10.04.2023, as Exhibit W-10.

(xi) Copy of the screenshots of WhatsApp Status of K. Chandrasekar, as Exhibit W-11 series.

12. In her examination-in-chief WW-1 claimed to be a permanent employee of SRBWIPL, where she was initially appointed as an Assistant Executive (Storekeeping) at Kulti on 11.06.2020. She was subsequently posted as a Senior Assistant in the Quality Assurance Department. Thereafter she was posted as Secretary to the CEO on 07.09.2020 for a period of one month. The witness deposed that K. Chandrasekar, CEO, sexually harassed her in various manner and tried to get intimate with her in his office and at his residence. As she did not yield to his demands, K. Chandrasekar, CEO called her in his cabin and informed that she could not serve the purpose of his secretary and terminate her from her service. The witness further stated that Mr. Ujjal Mukherjee, General Manager (P&M) of the establishment issued a letter to her on 05.10.2020, accusing her of collecting puja subscription by misusing her position in the company and sought for an explanation by 07.10.2020, the copy of letter has been produced as Exhibit W-5. The aggrieved employee submitted her reply dated 06.10.2020 along with two documents. In her affidavit-in-chief she stated that she wrote to the Secretary of Post Office Para Sarbojonin Durgapuja Committee, Kulti and wanted to know the reason why her name was incorporated in the Subscription Voucher, though she was not a member of the committee. On 05.10.2020 Ms. Indrani Gupta, a member of the committee replied through a letter that due to misunderstanding her name was incorporated in the Subscription Voucher of the committee and in this matter a police complaint was lodged on 08.10.2020. She further stated in her affidavit-in-chief that in spite explanation submitted by her along with documents from the puja committee, the management reduced her rank and pay in service from E1 to NE4. On 07.10.2020 once again Mr. Sayantan Banerjee, Manager issued a letter against her, levelling allegation that she violated the safety norms by not wearing Safety Shoes on the Shop floor during inspection. The employee replied to the letter on 08.10.2020, disclosing that shoes of her size were neither available at company's store nor in the open market, but the reply did not satisfy and the CEO who pressurize the Manager, QA to harass her repeatedly.

13. On 03.11.2020 the Deputy General Manager, QA issued a letter informing the charged employee to submit an explanation as to why disciplinary action would not be initiated against her, as she entered the factory premises on 02.11.2020 in unauthorized manner, without any valid Gate Pass and thereby violated the discipline of the company. In that letter explanation, in writing, was sought for within three days from the receipt of the letter as to why disciplinary action would not be taken against her for violating security rules. In her averment as WW-1, the charged employee stated that the management did not issue any Charge Sheet nor any Notice of enquiry and without appointing any Enquiry Officer and without holding any enquiry proceeding, the management has whimsically issued a letter of termination on 09.11.2020, which has been produced as Exhibit W-8. The evidence of the aggrieved

employee reveals that after her termination she submitted a complaint before the Managing Director, SRBWIPL dated 31.12.2020, seeking reinstatement on the ground that she had been subjected to sexual harassment by K. Chandrasekar, CEO and that she was not provided any opportunity to represent herself in the enquiry proceeding, which was held in violation of natural justice. An enquiry was held by the Chairperson and Members of the PoSH Committee found that the allegation against K. Chandrasekar was correct. In her evidence the dismissed employee has prayed for setting aside the order of termination from service and for her reinstatement in service as Senior Assistant, QA with full back wages from 09.11.2020 and for compensation for physical, mental and sexual harassment mated to her in her place of work.

14. In course of cross-examination of Workman Witness – 1 management did not venture to controvert the statements made by Siuli Chatterjee against K. Chandrasekar, CEO. She also reaffirmed that no copy of the Enquiry Proceeding or findings of the Enquiry Officer was supplied to her and no 2nd Show Cause Notice was issued by the Disciplinary Authority before issuing letter of termination. Furthermore, the letter of termination was not issued by the competent authority of the management.

15. Mr. Sushanta Bhattacharya, authorized representative of the management of SRBWIPL filed affidavit-in-chief in support of the management's case and has been examined as Management Witness – 1. The affidavit-in-chief appears to be a replica of the written statement, filed by the management. Management witness produced the following documents in support of their case :

(i) Copy of the letter dated 03.11.2020 regarding disciplinary action for unauthorized entry in the factory premises without having valid Gate Pass is produced as Exhibit M-1.

(ii) Copy of the letter of termination dated 09.11.2020, as Exhibit M-2.

(iii) Copy of the Note Sheet dated 09.11.2020, as Exhibit M-3.

(iv) Copy of the Show Cause Notice issued to Siuli Chatterjee, as Exhibit M-4.

(v) Copy of another Show Cause Notice dated 05.10.2020 issued to Siuli Chatterjee, as Exhibit M-5.

16. In his examination-in-chief the witness stated that he is the General Manager, Incharge at SRBWIPL and has been authorized to adduce evidence on behalf of the company. The witness stated that Siuli Chatterjee was appointed as Assistant Executive on 11.06.2020 and was posted at different units but unable to perform to the satisfaction of the management. From the post of Executive-Secretary to the CEO she was posted as Senior Assistant on 14.10.2020, which is an inferior post, due to her deficiency in work. The management witness further deposed that at the time she was posted as Senior Assistant, QA department, she was dismissed from her contractual service after an enquiry proceeding. The witness produced a copy of letter dated 03.11.2020 which disclosed the charge against the employee but in the same breath the witness deposed that no Enquiry Officer was appointed by the CEO or anyone else and no enquiry proceeding was held. A copy of letter dated 09.11.2020, relating to termination of service of Siuli Chatterjee has been produced as Exhibit M-2.

17. In his cross-examination the management witness deposed that the Service and Conduct Rule, 2019 of SRBWIPL applied to the contractual employees in their establishment but the witness failed to produce the said Service Rule, applicable to SRBWIPL. Cross-examination of MW-1 further reveals that from the post of Assistant Executive, Siuli Chatterjee was re-designated as Executive on 25.07.2020 and thereafter on 07.09.2020 she was posted as Executive-Secretary to the CEO. The witness admitted that on promotion of the employee his / her pay is increased and in the instant case on being posted as Executive-Secretary to the CEO her pay was Rs. 20,425/- per month. It transpires from the cross-examination of MW-1 that letter dated 03.11.2020 (Exhibit M-1) is the document disclosing the charge against the employee and the expression "Charge Sheet" has not been explicitly stated. It was suggested to the management witness that no specific charge was described in the Letter / Charge Sheet dated 03.11.2020 and it also does not disclose the rules and provisions of the service condition which had been violated by the candidate and does not disclose the indiscipline conduct. The witness denied such suggestions. The testimony of MW-1 however clearly admits that no one was appointed as the Enquiry Officer to hold enquiry in respect of charge levelled against the delinquent. The witness has categorically stated that they have no information if the charge of sexual harassment was proved against the CEO or that he was demoted from the post of CEO on the recommendation of POSH committee. The management witness denied the suggestion that Siuli Chatterjee was terminated from her service illegally to satisfy K. Chandrasekar, CEO and denied that she is entitled to be reinstated in the service.

18. The moot question for consideration by this Tribunal is whether the action of the management of SRBWIPL in terminating the service of Siuli Chatterjee by letter dated 09.11.2020 is legal and justified. If not, to what relief she is entitled to.

19. Mr. Debashis Mondal, learned advocate for the dismissed employee advancing his argument submitted that Siuli Chatterjee was a contractual employee who was appointed as an Assistant Executive by letter dated 09.06.2020, produced as Exhibit W-1. Initially the period of her employment was for three months as per the terms and conditions laid down in the letter of appointment issued by the competent authority. The condition of service also provided that the contractual period of service could be terminated or renewed further as may be decided by the CEO of the

company. Learned advocate referred to a letter dated 07.09.2020 issued by the CEO, whereby after completion of three months of probation period the management of SRBWIPL appointed her as Executive-Secretary to CEO on contractual basis from 11.09.2020 to 28.02.2022 and she was required to fill up her Performance Appraisal Form by 28th February of every year and put up the same before the competent authority. In case of poor performance, the management of the employer company reserved the right to terminate her service prior to completion of the tenure. Learned advocate referring to the evidence of Siuli Chatterjee (WW-1) argued that while being posted as Executive-Secretary to CEO from 11.09.2020, during a period of one month, she was accosted and subjected to sexual harassment by K. Chandrasekar, CEO but she could not raise any complaint before the company under the apprehension of losing her job. The witness in her affidavit-in-chief stated that she was under immense pressure of termination from service by the CEO for not satisfying his wishes. She experienced physical and mental torture and sexual harassment in the hands of CEO. On raising protest against the conduct of CEO towards her, she was degraded from a higher post to lower post on concocted and baseless allegations. Serious allegations have been made by Siuli Chatterjee in her affidavit-in-chief that the CEO tried to develop extramarital relationship with her but when the same could not be fulfilled, Mr. Soumita Chatterjee, her husband who was working under a contractor at SRBWIPL was terminated from his service. The CEO called Siuli Chatterjee to his residence on the pretext of learning Bengali language from her and tried to make physical contact. It is argued that when object of the CEO was not fulfilled a letter dated 05.10.2020 was issued by the General Manager (P&M) of the employer company (Exhibit W-5), at the instance of the CEO, alleging violation of service rules due to her involvement in collection of Puja subscription by misusing her position in the company. Learned advocate for the employee submitted that on receiving the letter Siuli Chatterjee replied to the same, raising objection against the false allegation. She also sought for an explanation from the Secretary of the Post Office Para Sarbojonin Durgapuja Committee, Kulti, as to why her name has been incorporated in the Subscription Vouchers, though she was not a member of the committee. Learned advocate referred to Exhibit W-6, the reply submitted by Siuli Chatterjee dated 06.10.2020, whereby she stated that she was not engaged with any puja committee nor did she collect any subscription and that the Post Office Para Sarbojonin Durgapuja Committee, Kulti had incorporated her name in the subscription voucher, without any prior permission and the same would be evident from the letters issued by Ms. Indrani Gupta, member of the committee and Secretary of Post Office Para Sarbojonin Durgapuja Committee, Kulti that the name of Siuli Chatterjee was erroneously mentioned due to some misunderstanding. It is submitted that even after such explanation submitted by her, the management of the company at the instance of the CEO reduced her rank from E1 to NE4 accompanied by reduction of her pay and posted her as Senior Assistant in the Quality Assurance Department by letter dated 14.10.2020 without any fault on the part of the employee.

20. Mr. Mondal argued that the management of the employer company did not stop there but in a vindictive manner issued a letter dated 07.10.2020 to Siuli Chatterjee, which has been marked as Annexure L to the affidavit-in-chief of management witness, seeking an explanation as to why action would not be taken against her for violating safety rules by not wearing safety shoes at the Shop floor. According to the lady employee, she submitted her explanation on 08.10.2020 stating that Safety Shoes of her size was not available in the Company Store as well as in the open marked but the management did not consider her plea. The final blow was dealt by the management by issuing a letter dated 03.11.2020, disclosing that a disciplinary action was being taken against her for her unauthorized entry in the factory premises without any valid Gate Pass. Learned advocate for the petitioner drew my notice to the letter dated 03.11.2020, produced as Exhibit W-7, which was issued by the Deputy General Manager, QA, stating therein that she had entered into the factory premises on 02.11.2020 and signed her attendance in unauthorized manner and due to her failure to submit a Police Verification Certificate in time she had to wait till the Deputy General Manager, QA returned after attending an urgent meeting in Kolkata and thereafter process issuance of a valid Gate Pass. On an allegation of entering the factory premises without a valid Gate Pass on 02.11.2020 Siuli Chatterjee was asked to submit an explanation, in writing, within three days as to why disciplinary action would not be taken against her for violating the security rules. Learned advocate argued that an employee of the company whose service validity had been extended till 28.02.2022 could not be debarred from entering into the premises of the factory for discharging her duty. It is only with a convoluted motive and to harass her, the management of the employer company raised a non-issue that she had entered into the factory premises on 02.11.2020 to sign her attendance without having a valid Gate Pass. It is vehemently contended that the employer company did not consider the explanation submitted by Siuli Chatterjee on 03.11.2020 through email to the CEO and the General Manager as to why she entered into the office of the factory without any valid Gate Pass, and without providing her any opportunity to reply to the Charge has arbitrarily, whimsically and in an illegal manner terminated her from her service by issuing a termination letter dated 09.11.2020 (Exhibit W-8) without having conducted any Departmental Enquiry in accordance with the service rules applicable to the employer company and employees. Learned advocate strenuously argued that the charge levelled against the employee by letter dated 03.11.2020 without issuance of any formal Charge Sheet or appointment of an Enquiry Officer or holding of enquiry proceeding or establishing the charge by examining management representative in support of the charge or affording reasonable opportunity to the charged employee of hearing and without issuance of any 2nd Show Cause Notice, issued the order of dismissal by an office who is not the competent authority. It is argued that the order of dismissal is arbitrary and illegal and the same requires to be set aside. Learned advocate in support of his argument placed reliance on a decision of the Hon'ble Supreme Court of India in the case of **Union of**

India and Others vs Mohd. Ramzan Khan [AIR (1991) SC 471], wherein the Hon'ble Supreme Court of India mandated that a 2nd Show Cause Notice along with Enquiry Proceeding and Findings of the Enquiry Officer should be served upon the delinquent for representing his case before the final decision is taken.

21. Mr. Ayan Ranjan Mukherjee, learned advocate for the management of the company took me through the evidence of management witness and argued that the allegation levelled by Siuli Chatterjee against K. Chandrasekar, CEO of the employer company is unfounded as she never lodged any complaint before any authority of the employer company nor before the police, in respect of her alleged sexual harassment by the CEO. It is only after the order of dismissal was passed on 09.11.2020 she has come out with a story to escape the rigour of the punishment and to seek reprieve from the order of termination. Learned advocate fairly admitted that no formal charge was framed against the employee nor any Enquiry Officer was appointed. It is also admitted that no enquiry proceeding was held and the management did not issue any 2nd Show Cause Notice before issuance of the order of dismissal. Learned advocate referred to a Note Sheet initiated by the Deputy General Manager, QA (Exhibit M-3) dated 19.11.2020 stating that the *"proceeding of the charges against Mrs. Siuli Chatterjee is forwarded for taking appropriate decision"* by the competent authority. It is argued that the CEO has approved the termination of Siuli Chatterjee on security and safety reasons. According to the learned advocate for the management the delinquent in paragraph 11 of her affidavit-in-chief has admitted that she had entered into the office of the factory without any valid Gate Pass, thereby nothing remains to be proved against her and the order of termination from service is just and appropriate and there is no reason for interfering with the same.

22. Considered the arguments advanced by the learned advocates of both parties in the light of evidence and materials on record. There is no dispute that Siuli Chatterjee was appointed as an Assistant Executive at SRBWIPL by the competent authority w.e.f. 11.06.2020 on a contractual basis, initially for a period of three months at a monthly emolument of Rs. 15,000/- (Rupees fifteen thousand only). Exhibit W-4 reveals that after completion of three months, the period of her service was extended up to 28.02.2022 on contractual basis and she was designated as Executive-Secretary to CEO and her gross monthly salary was Rs. 20,425/- (Rupees twenty thousand four hundred and twenty-five only). The said document established the employer-employee relationship between Siuli Chatterjee and SRBWIPL.

23. The crux of the issued in this case is that within a span of five months of service a charge was levelled against the employee by issuing letter dated 03.11.2020 (Exhibit W-7 / M-1) that a disciplinary action had been drawn up against her for entering the factory premises on 02.11.2020 without any valid Gate Pass and permission of higher authority. In the letter dated 03.11.2020 (Exhibit M-1) she was asked to submit her explanation, in writing, within three days, as to why disciplinary action would not be taken against her for violating security rules of the employer company. It is true that no copy of email or any reply to the notice has been filed on behalf of Siuli Chatterjee at the time of adjudication of this Industrial Dispute. In the written statement and affidavit-in-chief she has stated that on 03.11.2020 she had sent an email to the CEO and the General Manager, submitting her explanation as to why she entered into the office of the factory without any valid Gate Pass. This statement has not been controverted in the course of cross-examination of Siuli Chatterjee (WW-1). It is an admitted fact and also transpires from the evidence of the management witness that no enquiry proceeding was held. Mr. Sushanta Bhattacharya, General Manager (IC) (MW-1) of SRBWIPL in his cross-examination stated that no one was appointed as Enquiry Officer to hold enquiry in respect of the charge levelled against the employee. However, he has denied that Siuli Chatterjee was dismissed in an illegal manner without holding any enquiry proceeding against her. The materials on record is rife to suggest that no formal Charge Sheet was issued against the delinquent employee. The allegation made in letter dated 03.11.2020 disclosed the intention of the management to initiate a disciplinary action against the concerned employee for her unauthorized entry in the factory premises on 02.11.2020. The letter does not disclose the relevant provisions of Service and Conduct Rule, 2019 of SRBWIPL, applicable to the contractual employees working in the establishment. The letter dated 03.11.2020 does not disclose for a while as to whether the said charge was brought against Siuli Chatterjee with the approval of the competent authority of the company. If the contents of the allegation in the letter is considered, it would appear that the management of the company having extended the period of employment of Siuli Chatterjee up to 28.02.2022 was bent upon to stop the employee from entering the premises of the factory to attend her work. If the employee failed to enter the premises to attend her duty, the management conversely could have charged her for her unauthorized absence and would treated her in the same manner. The management is duty bound to provide a valid Gate Pass to approved employees in time. Management failing such responsibility cannot blame their employees for entering the place of work. It is an axiomatic truth that a person having a valid appointment in an establishment has an implied licence to enter the premises and the employee cannot be treated as a trespasser. Issuance of a Gate pass is only an arrangement made for enabling the employee to enter the premises. The management therefore, did not act in a bona fide manner by not issuing a Gate pass to the employee after appointing her for employment. It is established from the materials on record and from their own admission that the management did not hold any enquiry proceeding before the issuance of the letter of termination dated 09.11.2020 by Mr. U. Mukherjee, General Manager (P&M), without stating as to what constituted the charge framed by the Deputy General Manager, QA. It is not the case of the management that the Deputy General Manager, QA who issued the letter dated 03.11.2020, containing the purported charge had himself acted as the Enquiry Officer. It is crystal clear that the management issued the letter of dismissal without holding the enquiry proceeding whatsoever. It is obvious that

no copy of Enquiry Proceeding or Report was served upon the charged employee before taking the final decision. On this point the law has been clearly laid down by the Hon'ble Supreme Court of India in the case of **Union of India and Others vs Mohd. Ramzan Khan [AIR (1991) SUILI CHATTERJEE 471],** as follows:

> ***"** When the Inquiry Officer is not the Disciplinary Authority, the delinquent employee has a right to receive a copy of the inquiry officer's report before the Disciplinary Authority arrives at its conclusion with regard to the charges levelled against him. A denial of the inquiry officer's report before the Disciplinary Authority takes its decision on the charges, is denial of opportunity to the employee to prove his innocence and is a breach of principles of natural justice.***"***

From the facts and circumstances of this case I find and hold that no enquiry was held before dismissing Siuli Chatterjee form her service. Such act is arbitrary and violative of the principles of natural justice. It is a settled law that in a disciplinary action or regular trial, the burden of proof to establish the charge is upon the management of the employer and not on the accused. The burden must be discharged by proper evidence adduced by the representative of employer. In the instant case the management did not appoint any Enquiry Officer, no Notice of enquiry was issued to the employee, no evidence was led against the charge employee and the concerned employee was not given the opportunity to lead any evidence in support of her defence. I find there is a gross violation of the principles of natural justice and the management has acted in an arbitrary and unlawful manner by issuing letter of termination on 09.11.2020, which is found not sustainable under the facts and circumstances and law of natural justice.

24. It would be apposite to consider the reason why the management went ahead to take an abrupt decision of terminating a lawfully appointed employee without establishing the charge against her. The rival contention of the charged employee is that after she was posted as an Executive-Secretary to CEO from 07.09.2020 she was subjected to sexual harassment by Mr. K. Chandrasekar, CEO, who strove to develop extramarital relationship with her and created pressure upon her psychologically and also threaten to terminate her from service if she disclosed the same to others. Out of fear of losing her job she did not lodge any complaint, but ultimately Siuli Chatterjee raised a complain dated 31.12.2020 addressed to the Managing Director, SRBWIPL. It is gathered from her evidence that an enquiry proceeding was held by the Chairperson and Members of the PoSH Committee and the report in eight pages has been filed before the Tribunal as Exhibit W-3. It transpires from the Enquiry Report (Exhibit W-3) that K. Chandrasekar, CEO (respondent) had indulged in act of sexual harassment at workplace and thereby violated Rule 19.1 of RITES (CDA Rules), 1980 and there were administrative lapses at various stages in the official dealings done by the respondent. In their report the committee also observe that the charges of Mental Harassment of the complainant in various forms and on various occasion was very clear. The committee recommended taking strict action against the respondent for his misconduct of sexual harassment, in accordance of Rule 19.1 of RITES (CDA Rules), 1980 by imposing minor penalty on the respondent and to pay monetary compensation, equivalent to six months' salary to the complainant.

25. Having considered the facts and circumstances discussed above I find and hold that the order issued by the General Manager (P&M), in his letter dated 09.11.2020, terminating the service of Siuli Chatterjee on and from 09.11.2020 is not sustainable under the law and the same is hereby set aside. The management witness has not been able to produce the Rules governing the condition of employment of the contractual employees and whether they are to continue in service until they attend their age of superannuation. In such view of the matter, without any adverse findings against the concerned employee she is entitled to continue in service even though the period of service was up to 28.02.2022 as per Exhibit W-4. Since there has been no worthwhile reason for termination of service of Siuli Chatterjee, the management of SRBWIPL is directed to reinstate her in service within one month from the date of communication of this Award in the same post which she was occupying prior to her termination, on usual terms and conditions of service appliable to all other employees similarly placed. The period of her absence shall be treated as dies non. The aggrieved employee has been deprived of her earning and livelihood in a wrongful manner and as she had fallen a prey to the administrative hierarchy of the company. In my considered view this is a fit case to allow her full back wages and continuity in service. the Industrial Dispute is accordingly allowed on contest against the management of SRBWIPL.

Hence,

O R D E R E D

that the Industrial Dispute is allowed against the management of SRBWIPL on contest. The management of the employer company is directed to reinstate Siuli Chatterjee in her service within one month from the date of communication of the Award and pay her full back wages from 09.11.2020 till the date of her reinstatement. The Period of her absence shall be treated as dies non. Let an award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE**,** Presiding Officer

नई दिल्ली, 27 सितम्बर, 2024

का.आ. 1880.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स इंडियन ऑयल कॉर्पोरेशन लिमिटेड; मेसर्स प्रकाश इंटरप्राइस** के प्रबंधतंत्र के संबद्ध नियोजकों और **इंडियन ऑयल ठिका श्रमिक यूनियन** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता, पंचाट (रिफरेन्स न. 18/2022)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.09.2024 को प्राप्त हुआ था।

[फा. सं. एल-30011/03/2022-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 27th September, 2024

S.O. 1880.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 18/2022)** of the **Central Government Industrial Tribunal cum Labour Court, Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Indian Oil Corporation Limited; M/s Prakash Enterprise** and **Indian Oil Theka Shramik Union** which was received along with soft copy of the award by the Central Government on 27.09.2024.

[F. No. L-30011/03/2022-IR(M)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia

REF NO. 18 OF 2022

Parties : Employers in relation to the management of

M/**s. Indian Oil Corporation Ltd.,**

And

M/s. Prakash Enterprise

Versus

The Indian Oil Thika Shramik Union

Appearance :

On behalf of M/s. Indian Oil Corporation Ltd : Mr. Sushil Karmakar, Ld. Advocate

On behalf of M/s. Prakash Enterprise : Absent

On behalf of the Workmen : Mr. Suvadip Bhattacharjee, Ld. Advocate.

17th September, 2024

A W A R D

By order Noi.,L-30011/03/2022-IR(M) dated 17-02-2022, the Central Government, Ministry of Labour, has referred the following issue for adjudication by this Tribunal :-

"Whether the termination of services of Sri Arup Sardar and six others (list enclosed), engaged by M/s. Prakash Enterprise engaged in the establishment Chittaranjan Depot under the management of IOCL on the direction of the principal employer to close the depot without complying with the provision of section 25 –F of I.D. Act is legal and/or justified? If not, what relief the workmen are entitled to?"

Ld. Counsel for the management of M/s. Indian Oil Corpn. Ltd. is present. The union is also represented by its Ld. Counsel.

None appears from the side of contractor employer M/s. Prakash Enterprise.

The union files an affidavit sworn by Mr. Achyut Kumar Chakraborty, Vice President of the union stating that another Reference Case no. 09/2022 between the same parties is pending and as such he wants to withdraw the present reference case. Copy duly served and let it be taken on record.

The petition is taken up for hearing. Ld. Counsel for management submits the affidavit filed this day does not contain any whisper that issue involved in reference case no.09/2022 is similar to the issue involved in the present reference. However, he submits that he has no objection if the present reference is disposed of by passing a 'no dispute award'.

The record of reference case no.09/2022 is called for and from where it appears the parties to dispute are same i.e. management of M/s. Indian Oil Corpn. Ltd. as principal employer, M/s. Prakash Enterprise as contractor employer and the General Secretary, Indian Oil Thika Shramik Union. The issue involved in the said case read as follows:-

"Whether the retrenchment of Sri Arup Sardar and six others (list enclosed), engaged at Chittaranjan Depot of IOCL through contractor M/s. Prakash Enterprise, on closure of said Depot without complying with the provision of section 25 –F of I.D. Act is legal and justified? If not, what relief the workmen are entitled to?'

In the present reference the issue read as follows :-

"Whether the termination of services of Sri Arup Sardar and six others (list enclosed), engaged by M/s. Prakash Enterprise engaged in the establishment Chittaranjan Depot under the management of IOCL on the direction of the principal employer to close the depot without complying with the provision of section 25 –F of I.D. Act is legal and/or justified? If not, what relief the workmen are entitled to?'

Thus, it appears issues involved in both the references are same and parties are also same. Accordingly, the prayer of the union for withdrawal of the case by passing a 'no dispute award' is hereby allowed.

The Reference Case no. 18/2022 is hereby disposed of by passing a 'no dispute award'.

Justice K. D. BHUTIA**,** Presiding Officer

नई दिल्ली, 27 सितम्बर, 2024

का.आ. 1881.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स यू. टेक सर्विस; इंडियन ऑयल कॉर्पोरेशन लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री मानस रंजन सगाडीअ** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुबनेश्वर, पंचाट (रिफरेन्स न.-72/2018)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.09.2024 को प्राप्त हुआ था।

[फा. सं. एल-30012/20/2018-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 27th September, 2024

S.O. 1881.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 72/2018)** of the **Central Government Industrial Tribunal cum Labour Court, Bhubaneswar** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s U. Tech Services; Indian Oil Corporation Limited** and **Shri Manas Ranjan Sagadia** which was received along with soft copy of the award by the Central Government on 27.09.2024.

[F. No. L-30012/20/2018-IR(M)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Sri Dinesh Kumar Singh,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 72/2018

Date of Passing Order – 23rd August, 2024

Between :-

1. M/s. U. Tech Service,
   C-19, Lingaraj Vihar, Pokhariput,
   Bhubaneswar (Odisha) – 751 020

2. The Engineer-in-Chief (A & W),
   Medical Transit Camp, Paradip Refinery,
   Indian Oil Corporation Ltd., Swayang Tower,
   Plot No. M-73, Unit-4, Madhusudhan Nagar,
   Bhubaneswar (Orissa).

… 1st Party-Managements.

(And)

Shri Manas Ranjan Sagadia,
S/o. Shri Sarbeswar Sagadia,
At. Rusipada, Post – Baniasahi
District – Puri, Odisha.

… 2nd Party-Workman.

Appearances:

None. … For the 1st Party-Managements.

None. … For the 2nd Party-Workman.

O R D E R

In the present case, a reference was received from the Section Officer to the Government of India, Ministry of Labour & Employment, New Delhi vide order No. L-30012/20/2018 – IR(M), dated 26.11.2018 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 for adjudication of a dispute, under the following schedule: -

> "Whether the removal from service of Shri Manas Ranjan Sagadia, Room boy w.e.f. 30.06.2017 by M/s. Utech Service, a contractor under IOCL, Paradip Refinery, Bhubaneswaris legal and/or justified? If not, what relief the workman is entitled to?"

2. In the reference order, the Under Secretary to Government of India, Ministry of Labour & Employment, New Delhi commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to each one of the opposite parties involved in the dispute.

3. Despite directions so given, no statement of claim is received from the 2nd party-Workman.

4. On receipt of the above reference, notice was sent to the 2nd Party-Workman on 05.02.2019 and on dated 05.09.2023 for appearance and for filing of statement of claim. Neither the postal article sent to the 2nd Party-Workman, referred to above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred to above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the 2nd Party-Workman. Despite service of the notice, the 2nd Party-Workman opted to abstain away from the proceedings. No claim statement was filed on its behalf. Thus, it is clear that the 2nd Party-Workman is not interested in adjudication of the reference on merits.

5. Since the 2nd Party-Workman has neither filed statement of claim nor has led any evidence so as to prove its cause against the Managements, it is presumed that there is no claim of workman against the Managements.

6. In view of such, no claim Order is passed by this Tribunal.

7. Let this order be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dictated & Corrected by me.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2024

का.आ. 1882.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स यू. टेक सर्विस; इंडियन ऑयल कॉर्पोरेशन लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री रवीन्द्र कुमार स्वैन** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुबनेश्वर, पंचाट (रिफरेन्स न. 73/2018)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.09.2024 को प्राप्त हुआ था।

[फा. सं. एल-30012/18/2018-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 27th September, 2024

S.O. 1882.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 73/2018)** of the **Central Government Industrial Tribunal cum Labour Court, Bhubaneswar** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s U. Tech Services; Indian Oil Corporation Limited** and **Shri Rabindra Kumar Swain** which was received along with soft copy of the award by the Central Government on 27.09.2024.

[F. No. L-30012/18/2018-IR(M)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Sri Dinesh Kumar Singh,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 73/2018

Date of Passing Order – 23rd August, 2024

Between :-

1. M/s. U. Tech Service,
   C-19, Lingaraj Vihar, Pokhariput,
   Bhubaneswar (Odisha) – 751 020
2. The Engineer-in-Chief (A & W),
   Medical Transit Camp, Paradip Refinery,
   Indian Oil Corporation Ltd., Swayang Tower,
   Plot No. M-73, Unit-4, Madhusudhan Nagar,
   Bhubaneswar (Orissa).

… 1st Party-Managements.

(And)

Shri, Rabindra Kumar Swain,
At. Chitalpur, Post – Mukundadaspur,
Via – Pipili, District – Puri, Odisha.

… 2nd Party-Workman.

Appearances:

None. … For the 1st Party-Managements.

None. … For the 2nd Party-Workman.

O R D E R

In the present case, a reference was received from the Section Officer to the Government of India, Ministry of Labour & Employment, New Delhi vide order No. L-30012/18/2018 – IR(M), dated 26.11.2018 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 for adjudication of a dispute, under the following schedule:-

"Whether removal from service of Shri Rabindra Kumar Swain, House Keeping boy w.e.f. 30.06.2017 by M/s. Utech Service, a contractor under IOCL, Paradip Refinery, Bhubaneswar is legal and/or justified? If not, what relief the workman is entitled to?"

2. In the reference order, the Under Secretary to Government of India, Ministry of Labour & Employment, New Delhi commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to each one of the opposite parties involved in the dispute.

3. Despite directions so given, no statement of claim is received from the 2nd party-Workman.

4. On receipt of the above reference, notice was sent to the 2nd Party-Workman on 05.02.2019 and on dated 05.09.2023 for appearance and for filing of statement of claim. Neither the postal article sent to the 2nd Party-Workman, referred to above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred to above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the 2nd Party-Workman. Despite service of the notice, the 2nd Party-Workman opted to abstain away from the proceedings. No claim statement was filed on its behalf. Thus, it is clear that the 2nd Party-Workman is not interested in adjudication of the reference on merits.

5. Since the 2nd Party-Workman has neither filed statement of claim nor has led any evidence so as to prove its cause against the Managements, it is presumed that there is no claim of workman against the Managements.

6. In view of such, no claim Order is passed by this Tribunal.

7. Let this order be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dictated & Corrected by me.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2024

का.आ. 1883.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स यू. टेक सर्विस; इंडियन ऑयल कॉर्पोरेशन लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री राम चंद्र बराल** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुबनेश्वर, पंचाट (रिफरेन्स न. 74/2018)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.09.2024 को प्राप्त हुआ था।

[फा. सं. एल-30012/19/2018-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 27th September, 2024

S.O. 1883.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 74/2018)** of the **Central Government Industrial Tribunal cum Labour Court, Bhubaneswar** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s U. Tech Services; Indian Oil Corporation Limited** and **Shri Rama Chandra Baral** which was received along with soft copy of the award by the Central Government on 27.09.2024.

[F. No. L-30012/19/2018-IR(M)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Sri Dinesh Kumar Singh,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 74/2018

Date of Passing Order – 23rd August, 2024

Between :-

1. M/s. U. Tech Service,
C-19, Lingaraj Vihar, Pokhariput,
Bhubaneswar (Odisha) – 751 020

2. The Engineer-in-Chief (A & W),
Medical Transit Camp, Paradip Refinery,
Indian Oil Corporation Ltd., Swayang Tower,
Plot No. M-73, Unit-4, Madhusudhan Nagar,
Bhubaneswar (Orissa).

… 1st Party-Managements.

(And)

Shri Rama Chandra Baral,
S/o. Shri, Kailash Chandra Baral,
At. Barimunda, Post – BadaNinigaron,
District – Puri, Odisha.

… 2nd Party-Workman.

Appearances:

None. … For the 1st Party-Managements.

None. … For the 2nd Party-Workman.

O R D E R

In the present case, a reference was received from the Section Officer to the Government of India, Ministry of Labour & Employment, New Delhi vide order No. L-30012/19/2018 – IR(M), dated 26.11.2018 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 for adjudication of a dispute, under the following schedule:-

"Whether removal from service of Shri Rama Chandra Baral, Waiter w.e.f. 30.06.2017 by M/s. Utech Service, a contractor under IOCL, Paradip Refinery, Bhubaneswar is legal and/or justified? If not, what relief the workman is entitled to?"

2. In the reference order, the Under Secretary to Government of India, Ministry of Labour & Employment, New Delhi commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to each one of the opposite parties involved in the dispute.

3. Despite directions so given, no statement of claim is received from the 2nd party-Workman.

4. On receipt of the above reference, notice was sent to the 2nd Party-Workman on 05.02.2019 and on dated 05.09.2023 for appearance and for filing of statement of claim. Neither the postal article sent to the 2nd Party-Workman, referred to above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred to above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the 2nd Party-Workman. Despite service of the notice, the 2nd Party-Workman opted to abstain away from the proceedings. No claim statement was filed on its behalf. Thus, it is clear that the 2nd Party-Workman is not interested in adjudication of the reference on merits.

5. Since the 2nd Party-Workman has neither filed statement of claim nor has led any evidence so as to prove its cause against the Managements, it is presumed that there is no claim of workman against the Managements.

6. In view of such, no claim Order is passed by this Tribunal.

7. Let this order be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dictated & Corrected by me.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2024

का.आ. 1884.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, बालानगर, हैदराबाद,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री के. नरेन्द्र, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय- हैदराबाद पंचाट(संदर्भ संख्या 55/2009) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27/09/2024 को प्राप्त हुआ था।

[फा. सं. एल - 42025-07-2024-172-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 27th September, 2024

S.O. 1884.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No. 55/2009) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager, Hindustan Aeronautics Limited, Balanagr, Hyderabad, and Shri K. Narender, Worker,** which was received along with soft copy of the award by the Central Government on 27/09/2024.

[F. No. L-42025-07-2024-172-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: -

Sri Irfan Qamar
Presiding Officer

Dated the 31st day of July, 2024

INDUSTRIAL DISPUTE L.C.No.55/2009

Between:

Sri K. Narender,
S/o K. Brahmaiah,
H.No.6-113,
Raju Colony, Near Gandhi Statue,
Balanagar, Hyderabad.

.....Petitioner

AND

General Manager,
M/s. Hindustan Aeronautics Limited,
Hyderabad Division (Avionies),
Balanagar, Hyderabad.

....Respondent

Appearances:

For the Petitioner : M/s. B.G. Ravindra Reddy, P. Srinivasulu & Y. Ranjeeth Reddy, Advocates

For the Respondent: M/s. K. Srinivasa Murthy & V. Uma Devi, Advocates

AWARD

Sri K. Narender, who worked as Office Boy (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Hindustan Aeronautics Limited seeking for reinstatement into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The brief facts as averred in the claim statement filed by the Petitioner are as follows**:-

It is submitted that the Petitioner was appointed as office boy on casual basis on 5.4.2004 in the Customers Service Department of the Respondent company. He worked continuously up to 24.5.2008 and he was terminated from service with effect from 25.5.2008 without issuing any written order or assigning any reason. It is submitted that the petitioner has tried to approach the Respondent but in vain. Then the Petitioner sent Representation dated 17.4.2009 under Registered Post acknowledgement due. Though the said representation was served on 20.4.2009 in the Respondent company, there was no reply from the Respondent. It is submitted that as there was no reply from the respondent, Petitioner is constrained to approach this Court. Petitioner's termination is illegal, arbitrary, unjustified and in violation of section 25 F,G & H of the Industrial Disputes Act and also in violation of Section 25 N of the ID Act, as the Petitioner was not given one month notice, or notice pay and no retrenchment compensation was paid to him. It is submitted that the Petitioner is unemployed and he is unable to secure any alternative employment inspite of his best efforts. His last drawn salary was Rs.3200/- per month. Hence, Petitioner prays for reinstatement into service with back pages and all other attendant benefits.

3. **Respondent filed counter denying the averments of the Petitioner as under**:-

The Respondent filed counter denying the averments of the petition with the

It is submitted that Petitioner was never in the employment of the Respondent company. None of the provisions under the sections of ID Act are applicable to the case of the Petitioner as he was neither directly employed by the Respondent company nor he was retrenched by the Respondent company. It is submitted that the Petitioner was engaged by a contractor Sri A. Maisaiah and the Petitioner was deployed by Sri A. Maisaiah, Contractor in the contractual work awarded to him. The said contractor was an independent employer carrying out the jobs awarded under the contract and upon the termination of the said contract he was not given any further contract. The Petitioner must seek remedy against the said contractor who has employed him for a limited period of time under the Contract Labour (R&A) Act, 1970. It is submitted that the Respondent does not have any service particulars of the Petitioner and other details relating to his deployment by the said contractor in any other jobs. The Petitioner was never employed by the Respondent company either as a casual or in any other capacity. But he was working under Sri A. Maisaiah, Contractor during the period of contract awarded to him and after expiration of the said contract, there was no relationship whatsoever between the Petitioner and the Respondent. Hence, prayed to dismiss the claim petition.

4. On the basis of rival pleadings of both the parties following issues arise for determination in the present matter:-

I. Whether there exists relationship of employer and employee between the parties?

II. Whether the services of the workman has been terminated illegally or unjustifiably by the management?

III. To what relief if any, the Petitioner is entitled for?

Findings:-

5. In order to discharge the onus and prove the fact of relationship of employer and employee between the parties, the workmen has examined himself as WW1 and filed his evidence by way of affidavit wherein he has reiterated the plea taken in the petition. He has also filed documents in evidence, Ex.W1 is the representation and Ex.W2 is the attendance certificate of the Workman.

6. In rebuttal, Respondent management filed the chief affidavit of the Witness MW1and in documentary evidence, he has filed the four documents. Ex.M1 is the notice to Sri A. Maisaiah regarding award of job contract dated 27.7.2006, Ex.M2 is the tender notice dated 16.4.2006, Ex.M3 is agreement between Sri A. Maisaiah and HAL dated 28.8.2006 and Ex.M4 is the extension of job contract to Sri A. Maisaiah dated 29.12.2008.

7. Heard the argument of Learned Counsels for parties and the Petitioner has also filed written submissions.

8. **Point No.I**:-Onus to prove the relationship of employer and employee between the parties rests upon the shoulder of the Workman. It is settled law that, " burden of proving the employer and employee relationship primarily rests upon the person who asserts its existence. In a situation where a person asserts to be an employee of the management, of which the management denied, the primary onus rests upon the person so asserting to give positive evidence in his favour. The initial burden of proof to discharge rests upon the Workman".

In the case of **Automobile Association Upper India vs. P.O., Labour Court and another reported in 130(2006) DLT 160, Hon'ble High Court of Delhi** have held,

> " *Engagement and appointment of the Workman in service can be established either by direct evidence like existence and production of appointment letter or written agreement, or by circumstantial evidence of incidental or ancillary records in nature of attendance register, salary register, leave records, deposit of PF contribution, ESI, etc., or even by examination of Co-worker who may depose before the court that the Workman was working with the management."*

Further, **Honourable Supreme Court of India in the case of Workman of Nilgiri Coop. Mkt. Society Ltd. vs State of Tamil Nadu reported in AIR 2004 SC 1639** held that,

> *"It is a well settled principle of law that the person who is set up a plea of existence of relationship of employer and employee, the burden would be upon him."*

Further, in the case **N.C. John vs Secretary Thodupuha Taluk Shop and Commercial Establishment Workers Union and others., 1973 LAB.IC. 398, the Kerala High Court** held,

> *"The burden of proof being on the Workman Jai Prakash of 21 to establish the employer employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer employee relationship."*

In the case of **Kanpur Electricity Supply Co. Ltd., vs Shamim Mirza, 2009/1 SCC 20, the Hon'ble Supreme Court** held,

> *"It Is trite that the burden to prove that a claimant was in the employment of a particular management, primarily lies on the person who claims to be so, but the degree of proof, so required varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer -employee relationship."*

Further, in the case of **Baburam vs. Govt. of NCT of Delhi & Anr., 247(2018) Delhi Law Times 596, the High Court of Delhi** have held,

> *"It is well settled principle of law that the person, who sets up a plea of existence of relationship of employer and employee, the burden would be upon him."*

9. Thus, in view of the law laid down by the Hon'ble Supreme Court and High Courts and evidence produced by the parties it is to be examined, whether claimant has established the employer and employee relationship between the parties. As per claim statement the workman has claimed that he was appointed as an office boy on casual basis on 5.4.2004 in the Customer Service department of the Respondent company and he worked continuously up to 24.5.2008 and he was terminated from service with effect from 25.5.2008 without issuing any written order and without assigning any reason. Further, workman claimed that his termination is in violation of Section 25 F, G &H of Industrial Disputes Act and also in violation of Section 25N of the I.D. Act, 1947. Further, workman claimed that he was not given one month notice or notice pay. In order to discharge his onus workman has examined himself as a WW1 and in his chief affidavit he has reiterated the plea taken in the claim statement. Workman was cross examined by the Respondent counsel, wherein he has deposed, *"I have not applied for any post in the Respondent company, I have approached one Mr. Ganganna for the purpose of job, but I do not know how I came to know about the vacancy. No appointment letter was issued to me by the Respondent's office. No paper was issued to me containing the nature of duties. No identity card was issued to me to enter into the premises of the Respondent's company. I was getting payment on monthly basis. I was orally informed that I would be paid Rs.2000/- per month towards wages. I was getting payment only on the days of my attendance in the office. No payslip was given to me in token of my payment. I was not signing in any register, only the Respondents are taking my attendance. I was getting correct payment towards my work. Payment was not made through bank. But it was given to me manually. No signature was obtained from me towards proof of payment. About 20 workers, including me, were working under the respondent. I was not covered under ESI scheme, so also EPF."* Thus, from the above statement of the witness WW1, it is clear that Respondent never issued any appointment letter in his name and no pay slip was given to him by the Respondent management. Further, WW1 in his cross examination states, *"I was engaged by one Mr. A. Maisaiah labour contractor and through him, I was engaged. I used to get wages through Mr. A. Maisaiah, the contractor. It is true that I was covered under EPF by Mr. A. Maisaiah, the contractor and accordingly returns under Section 3 and 6A of the Act was filed by the contractor. It is also true to say that I was covered under ESI Act by the contractor and registered under Form 7 of ESI Act was maintained by the contractor. It is true that contractor was terminated from service by the Respondent's company and accordingly we have to leave the work along with the contractor. It is true that I was working under the contractor and not under the Respondent and there was no employer employee relationship between the Respondent and ourselves."* Thus, from the above statement of the WW1, it is quite manifest that the workman was not appointed directly by the Respondent and he was engaged by contractor Sri A. Maisaiah on daily wages. Further, it is also established from the statement of WW1 that contractor was terminated from service by Respondent Company and accordingly he has to leave the work along with contractor. Thus, it is

unequivocally established that the workman herein was working in the Respondent Management through contractor Sri A. Maisaiah and when contractor was terminated from service by Respondent Management automatically the services of the workman was terminated as per terms of contract, thus there exists no employer employee relationship between workman and Respondent.

10. The documentary evidence, photocopies of attendance sheets filed by the workman would not go to establish that the workman was appointed by the Respondent directly for doing the work in his office. The workman has not produced any documentary proof regarding his appointment by the management. The workman herein has utterly failed to discharge the burden of proof regarding employer employee relationship between the parties by any cogent and relevant evidence. Thus, the claimant failed to produce any proof of payment of salary, appointment letter issued by the management and he did not produce also any order of termination issued by the Respondent. Thus, workman failed to produce any documentary evidence to prove the relationship of employer and employee between the workman and Respondent.

11. On the other hand, Respondent in his counter has contended that Petitioner claimed that he was appointed on casual basis as an office boy on 5.4.2004 and he has continuously worked upto the alleged termination of service on 24.5.2008 in the Customer Care Department of the Respondent company is false and denied. Further, Respondent has denied that the workman was never worked in the employment of the Respondent company and therefore, provision of Section 25 F of the ID Act is not applicable to the case of the Petitioner. Similarly, Section 25 F, G & H, describe the procedure for retrenchment and reemployment of the workman and provision of Section 25 N of ID Act and it is not applicable to the Petitioner's case. Further, Respondent contended that Petitioner was engaged by the contractor by name Mr. A. Maisaiah who is the contractor, who is a resident of Kukatpally, Hyderabad and the Petitioner was deployed by Mr. A. Maisaiah, Contractor in the contractual work awarded to him. The said contractor was an independent employer carrying out the jobs awarded under the contract and upon the termination of the said contract. The contractor was not given any fresh contract. Further, it is contended that if the Petitioner wants to claim any relief for the work rendered by him, under the above named contractor, he must seek remedy against the said contractor who has employed him for a limited period of time. The Petitioner cannot therefore have any claim against the Respondent company, much less reinstatement in service with back wages and other attendant benefits. Further, it is contended that the Contract Labour (R & A) Act, 1970 specifies the provisions with regard to the obtaining of a licence by a contractor when he employs 20 or more workmen under a contract in any organization. It is for the Petitioner to seek remedies, if any, under the Contract Labour (R&A) Act against the said contractor who was his employer. The Respondent does not have the service particulars of the Petitioner and other details relating to his deployment by the said contractor in any other jobs. Further, it is contended that Petitioner was never employed by Respondent company either as a casual or in any other capacity and he was working under Mr. A. Maisaiah, Contractor during the period of contract awarded to him and after expiration of the said contract, there was no relationship whatsoever between the Petitioner and the Respondent. Further, the Respondent has also filed the documentary evidence. The award of job contract dated 27.7.2006 in response to the tender for providing pantry and other services in departments and supply of cleaning materials. This contract was for one year from 1.8.2006. Further, the agreement dated 25.8.2006 has been filled by Respondent, which goes to show that in pursuance of the award of job contract an agreement was entered between the contractor and the Respondent. "Clauses 2,3,4,5 & 6 of the agreement clearly mention that company will have privity of contract with the contractor only and will not have any connection with the workers engaged by the contractor and the contractor shall be responsible in respect of the employment or non-employment of the work force engaged by him at his own level and the Company shall have no role to play in the said matter." In view of the condition mentioned in the agreement dated 25.8.2006 between the Contractor and the Respondent, the Respondent has no privity of contract with the Petitioner regarding his employer and employee relationship. However, WWI in his cross examination has admitted in so many words that he was engaged by one Mr. A. Maisaiah, labour contractor, to work in Respondent office and with the termination of contract of service of the contractor, he also left the employment.

12. Thus, in view of fore gone discussion and in the light of the evidence adduced by both the parties and the law laid down by the Hon'ble Apex Court as discussed in the preceding paragraphs, I am of the considered view that there exists no Employer and employee relationship between the workman and the Respondent management.

Thus, Point No.I is answered accordingly.

13. **Point No.**II:- In view of the findings given at Point No.I, as there exists no Employer and employee relationship between the Petitioner Workman and Respondent, therefore, the question of illegal termination from service as claimed by Petitioner does not arises in the present matter and there is no question of contravention of any provision of I.D. Act, 1947 by the Respondent Management in terminating the service of Petitioner.

Thus, Point No.II is answered accordingly.

14. **Point No.III**:- In view of the findings given, at Points No.I & II, the Petitioner is not entitled to any relief as claimed by him and petition is liable to be dismissed.

This Point is answered accordingly.

AWARD

In the result, it is held that the Petitioner Sri K. Narender is not entitled to any relief and as such, the petition is liable to be dismissed. Therefore, the petition stands dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 31st day of July, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri K.Narender	WW1: Sri Rani Raja Gopal

Documents marked for the Petitioner

Ex.W1:	Photostat copy of representation to Respondent along with postal receipt and acknowledgement dt. 17.4.2009
Ex.W2:	Photostat copy of attendance sheets from 1.4.2004 to 31.1.2008

Documents marked for the Respondent

Ex.M1:	Photostat copy of notice to A. Maisaiah reg. award of job contract dt.27.7.2006
Ex.M2:	Photostat copy of tender notice dt. 16.4.2006
Ex.M3:	Photostat copy of agreement between A. Maisaiah and HAL dt.28.8.2006
Ex.M4:	Photostat copy of extension of job work contract to A. Maisaiah dt. 29.12.2008

IRFAN QAMAR, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2024

का.आ. 1885.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **भारतीय जीवन बीमा निगम** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री आशीष शर्मा** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर, पंचाट (रिफरेन्स न. 81/2015)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.09.2024 को प्राप्त हुआ था।

[फा. सं. एल-17012/16/2015-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 27th September, 2024

S.O. 1885.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 81/2015)** of the **Central Government Industrial Tribunal cum Labour Court, Jaipur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Bhartiya Jeevan Bima Nigam** and **Shri Ashish Sharma** which was received along with soft copy of the award by the Central Government on 27.09.2024.

[F. No. L-17012/16/2015-IR(M)]

DILIP KUMAR, Under Secy.

ANNEXURE

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

पीठासीन अधिकारी

राधा मोहन चतुर्वेदी

सी.जी.आई.टी. प्रकरण सं.– 81/2015

Reference No. L-17012/16/2015-IR (M) **Dated: 28.09.2015**

श्री आशीष शर्मा पुत्र श्री पूरण कुमार शर्मा, निवासी– 17 जनकपुरी, दाउदपुर, अलवर (राज.)।

.....प्रार्थी

बनाम

1. प्रबंधक, भारतीय जीवन बीमा निगम, शाखा कार्यालय, मोती डुंगरी अलवर, राज.।

2. मण्डल प्रबंधक, भारतीय जीवन बीमा निगम, मण्डल कार्यालय प्रथम, जीवन प्रकाष, भवानी सिंह रोड, जयपुर राजस्थान।

.....अप्रार्थीगण/विपक्षी

उपस्थितः–

: श्री सुरेन्द्र सिंह नालोट, अभिभाषक – प्रार्थी।

: श्री जे. के. अग्रवाल, अभिभाषक –विपक्षीगण।

: अधिनिर्णय :

दिनांक :25.07.2024

1. श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 28.09.2015 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 (1) (डी) व 2A के अन्तर्गत प्रदत्त शक्तियो के अनुसरण में निम्नांकित औद्योगिक विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :–

> ***"Whether the action of the management of Life Insurance Corporation of India, Branch Office Alwar to terminate the service of Shri Ashish Sharma, workman, Oral order dated 16.08.2012. If not, what relief the workman is entitled for?***

2. दिनांक 06.06.2016 को प्रार्थी की ओर से दावे का अभिकथन प्रस्तुत किया गया जिसके संक्षिप्त अभिवचन इस प्रकार हैः–

3. प्रार्थी को जल सेवक के पद पर विपक्षी के शाखा कार्यालय मोती डूंगरी, अलवर में दिनांक 23.07.2009 को जारी साक्षात्कार पत्र के माध्यम से दिनांक 03.09.2009 को 100/–रू. प्रतिदिन मजदूरी पर 85 दिन के लिए प्रारम्भ में नियुक्त किया गया। विपक्षीगण ने 85 दिन के उपरांत मौखिक आदेश से प्रार्थी की सेवा को विस्तृत किया, किंतु दिनांक 16.08.2012 को जब प्रार्थी काम पर आया तो विपक्षी द्वारा मौखिक रूप से कार्य पर लेने से मना कर दिया गया। विपक्षी ने मात्र एक माह (सितम्बर, 2009) का वेतन भुगतान प्रार्थी को किया। अक्टूबर, 2009 से अगस्त, 2012 तक का वेतन भुगतान प्रार्थी को नहीं किया। प्रार्थी द्वारा वेतन की मॉग करने पर उसे मात्र आश्वासन दिये गये। प्रार्थी ने पिछले एक वर्ष में निरंतर 240 दिन से अधिक कार्य किया है। प्रार्थी को दिनांक 16.08.2012 को सेवामुक्त करने के पूर्व कोई नोटिस अथवा नोटिस अवधि का वेतन नहीं दिया गया। सेवामुक्ति का कोई कारण भी नहीं बताया गया। प्रार्थी से कनिष्ठ श्रमिक को विपक्षी ने कार्य पर रखा है और प्रार्थी को कोई वरीयता नहीं दी गई। विपक्षी निगम ने अधिनियम की धारा 25 **F G** व **H** के प्रावधानों का उल्लंघन किया है। अतः सेवामुक्ति को अवैध घोषित कर प्रार्थी को विगत वेतन परिलाभों, सेवा में निरंतरता एवं बकाया अवधि का वेतन दिलवाते हुये सेवा में बहाल किया जावे।

4. दिनांक 05.07.2016 को विपक्षीगण ने वादोत्तर प्रस्तुत किया जिसके संक्षिप्त कथन इस प्रकार हैः–

5. प्रार्थी ने यह विवाद काफी विलम्ब से प्रस्तुत किया है। प्रार्थी को केवल 85 दिन के लिए नियुक्ति दी गई थी, और उसे यह सूचित कर दिया गया था कि 85 दिवस समाप्त होते ही सेवायें समाप्त हो जायेगी। प्रार्थी ने नियुक्ति की शर्तो को समझकर दिनांक 03.08.2009 को कार्यभार ग्रहण किया तथा 13.08.2009 तक ही अपनी सेवाये दी। उसके पश्चात वह कार्य पर नहीं आया। प्रार्थी को इस अवधि का वेतन भुगतान कर दिया गया। अधिनियम की धारा 2 (**oo**) (**bb**) के प्रावधानों से प्रार्थी की नियुक्ति आच्छांदित है। विपक्षी ने दिनांक 16.08. 2012 को प्रार्थी की सेवा समाप्त नहीं की, निश्चित अवधि के समाप्त होने पर प्रार्थी की सेवा स्वतः समाप्त हो गई। दिनांक 16.08.2012 के पूर्व के 12 महीनों में प्रार्थी ने 240 दिन कार्य नहीं किया। प्रार्थी का यह कथन नितांत मिथ्या एवं अविश्वसनीय है कि वह लगभग तीन वर्ष की अवधि में बिना वेतन प्राप्त किये हुये कार्य करता रहा हो। अतः दावा अस्वीकार किया जावे।

6. प्रार्थी ने विपक्षी द्वारा दिये गये वादोत्तर का खण्डन करते हुये दिनांक 06.12.2016 को अतिरिक्त कथन भी प्रस्तुत किये है।

7. प्रार्थी ने अपने साक्ष्य में AW-1 आशीष शर्मा (स्वयं प्रार्थी) को परीक्षित किया। कोई प्रलेख साक्ष्य में प्रदर्शित नहीं किया गया।

8. विपक्षी की ओर से आर. के. जैन, प्रबंधक को साक्ष्य में परीक्षित किया गया और प्रलेखीय साक्ष्य में प्रदर्श M-1 साक्षात्कार पत्र प्रदर्शित किया गया।

9. दिनांक 16.07.2024 को मैंने उभयपक्ष के तर्क सुने तथा उपलब्ध साक्ष्य पर मनन किया।

10. प्रार्थी का यह तर्क है कि प्रदर्श M-1 पत्र विपक्षीगण ने साक्षात्कार हेतु दिनांक 23.07.2009 को जारी किया था। विपक्षीगण की यह स्वीकृति है कि प्रार्थी को 85 दिन की अवधि के लिये जल सेवक के पद पर नियुक्त किया गया था। इस प्रकार प्रार्थी एवं विपक्षी के बीच नियोजक और कर्मकार का संबंध होना किसी प्रकार विवादित नहीं है। प्रार्थी की सेवा में मौखिक रूप से 85 दिन की अवधि समाप्त होने पर विपक्षी द्वारा सेवा का विस्तार किया गया। किंतु विपक्षीगण ने प्रार्थी को सितम्बर, 2009 से अगस्त, 2012 तक किये गये कार्य का वेतन भुगतान नहीं किया और बारम्बार मौखिक आश्वासन दिये जाते रहे। प्रार्थी ने विपक्षी से सितम्बर, 2009 से अगस्त, 2012 तक प्रार्थी की उपस्थिति एवं वेतन भुगतान संबंधी अभिलेख प्रस्तुत करवाने का आवेदन किया किंतु विपक्षीगण ने अधिकरण द्वारा आदेश दिये जाने पर भी उक्त अभिलेख प्रस्तुत नहीं किया। यदि विपक्षी यह अभिलेख प्रस्तुत करते तो प्रार्थी का दिनांक 15.08.2012 तक विपक्षी के अधीन कार्य करना प्रमाणित हो जाता। इसलिए विपक्षी के विरूद्व प्रतिकूल उपधारणा की जावे। उनका यह भी तर्क है कि विपक्षी निगम और विभिन्न श्रमिक संघो के मध्य केन्द्रीय औद्योगिक अधिकरण द्वारा पारित अवार्ड दिनांक 17.04.1986 के अनुसार जिन श्रमिकों ने 2 वर्ष की अवधि में 70 दिन कार्य किया हो उन्हें विपक्षी की सेवा में अवशोषित किये जाने का निर्देश दिया गया है। चूकिं प्रार्थी को अवैध रूप से सेवा मुक्त किया गया है इसलिए प्रार्थी के अंशकालीन कर्मकार होने पर भी उसे अधिनियम की धारा 25 **F** के प्रावधानों का संरक्षण प्राप्त है। उन्होंने अपने तर्क के समर्थन में निम्नाकिंत न्यायिक दृष्टांत प्रस्तुत किये।

1. तमिलनाडू टर्मिनेटिड फुलटाईम टेम्परेरी एल.आई.सी. एम्पलाईज ऐसोसियेशन बनाम एल.आई.सी. ऑफ इंडिया सिविल अपील नं. 6950/2009 निर्णय तिथि 18.03.2015 (सुप्रीम कोर्ट)।

2. डिवीजनल मेनेजर न्यू इंडिया इन्श्योरेंस कम्पनी लिमिटेड बनाम ए. शंकर लिगंम (2008) 10 **SCC** 698।

11. अभिभाषक विपक्षीगण ने प्रार्थी द्वारा प्रस्तुत तर्को का खंडन करते हुये मुख्य रूप से यह कहा है कि प्रार्थी को एक निश्चित अवधि हेतु जल सेवक के पद पर नियुक्त किया गया था तत्पश्चात उसकी सेवा अवधि में न तो विस्तार किया गया और न ही प्रार्थी ने ऐसा कोई लिखित साक्ष्य प्रस्तुत किया है। इसलिये 85 दिन की अवधि व्यतीत होने पर प्रार्थी की सेवा स्वतः समाप्त हो गयी। सेवा मुक्ति के पूर्ववर्ती एक वर्ष की अवधि में 240 दिन कार्य करने का तथ्य प्रमाणित करने का दायित्व प्रार्थी पर ही है, जो उसने निर्वहन नहीं किया। प्रार्थी के प्रतिपरीक्षा में किये गये कथनों का उल्लेख करते हुये उन्होंने प्रार्थी के कथनों एवं आचरण को मिथ्या एवं अविश्वसनीय कहा है। प्रार्थी ने छल पूर्वक अपनी शैक्षणिक योग्यता छुपाते हुये अस्थाई नियुक्ति प्राप्त की। जब उसे यह आशंका हुई कि उसका छल पकडा जा सकता है, तो वह मात्र 10 दिन कार्य करके अनुपस्थित हो गया। कोई व्यक्ति लगभग तीन वर्ष की अवधि तक बिना कोई वेतन प्राप्त किये हुये तथा बिना कोई परिवाद प्रस्तुत करते हुये कार्य करता रहे यह संभव नहीं है। प्रार्थी ने इस विवाद में कोई प्रलेखीय साक्ष्य प्रस्तुत नहीं की

है। प्रार्थी ने जो प्रलेख विपक्षी से प्रस्तुत करवाने चाहे वह विपक्षी के संस्थान में उपलब्ध नहीं थे इसलिए विपक्षी के सक्षम अधिकारी श्री मुन्नाराम, मुख्य प्रबंधक ने अधिकरण के आदेश की अनुपालना में दिनांक 23.01.2018 को ही शपथ पत्र प्रस्तुत किया है। जिन प्रलेखों का कोई अस्तित्व ही नही हो, उनके प्रस्तुत न करने पर विपक्षी के विरूद्व प्रतिकूल उपधारणा नहीं की जानी चाहिये। अतः दावा निरस्त किया जावे। उन्होंने उन्होंने अपने तर्क के समर्थन में निम्नाकिंत न्यायिक दृष्टांत प्रस्तुत किये।

1. मै. हरियाणा स्टेट **F.C.C.W.** स्टोर लि. बनाम रामनिवास व अन्य 2002 (94) **FLR** 618 (सुप्रीम कोर्ट)।
2. रेंज फोरेस्ट ऑफीसर बनाम एस. टी. हादीमनी 2002 (93) **FLR** 189 (सुप्रीम कोर्ट)।
3- मोहम्मद अली बनाम स्टैट ऑफ हिमाचल प्रदेष **AIR** 2018 (सुप्रीम कोर्ट) 2194
4. स्टेट ऑफ उत्तराखण्ड व अन्य बनाम श्रीमती सुरेशवती AIR 2021(सुप्रीम कोर्ट) 923।
5. श्रीमती डूलू डेका बनाम स्टेट ऑफ आसाम **AIR** 2023 (सुप्रीम कोर्ट) 4650
6. आम जनता बनाम स्टेट ऑफ राजस्थान AIR 2021 (राज.) 106

12. उभयपक्ष के तर्को एवं अभिवचनों पर विचार के पश्चात इस विवाद में निम्नांकित विचारणीय बिन्दु उत्पन्न हुयेः—

1. क्या प्रार्थी को जलसेवक के पद पर विपक्षी द्वारा दिनांक 03.08.2009 को नियुक्त किये जाने के उपरांत मौखिक रूप से समय—समय पर सेवा में विस्तार किया गया तथा दिनांक 16.08.2012 को विपक्षीगण ने अधिनियम की धारा 25 **F** के प्रावधानों की अवहेलना करते हुये प्रार्थी को सेवामुक्त कर दिया?

.....प्रार्थी

2. क्या प्रार्थी को सेवामुक्त करने के उपरांत प्रार्थी से कनिष्ठ व्यक्ति को विपक्षीगण ने सेवा में नियुक्त किया एवं प्रार्थी को नियुक्ति हेतु वरीयता नहीं दी गई?

.....प्रार्थी

3. अनुतोषः

13. उपर्युक्त विचारणीय बिन्दुओ पर क्रमिक विनिश्चय इस प्रकार हैः—

14. **<u>विचारणीय बिन्दु संख्या—1</u>**

15. इस संबंध में प्रार्थी आशीष शर्मा ने अपने शपथ पत्र में यह कहा है कि उसे दिनांक 23.07.2009 के साक्षात्कार पत्र के माध्यम से साक्षात्कार लेकर दिनांक 03.09.2009 को नियुक्त किया गया। (प्रार्थी ने प्रति परीक्षा में संशोधन करते हुये यह कहा है कि 03.08.2009 को सेवा में ज्वाइन किया था) प्रार्थी कहता है कि वर्ष 2010 में 135/—रू. प्रतिदिन, वर्ष 2011 में 145/—रू. प्रतिदिन, एवं वर्ष 2012 में 171/—रू. प्रतिदिन के रूप में वृद्वि करते हुये प्रार्थी को रखा गया। विपक्षी द्वारा 85 दिन के बाद मौखिक आदेश से प्रार्थी की सेवा को निरंतर किया गया। सितम्बर, 2009 तक एक माह का वेतन प्रार्थी को दिया गया उसके बाद अक्टूबर, 2009 से अगस्त, 2012 तक का वेतन भुगतान विपक्षी द्वारा नहीं किया गया। प्रतिपरीक्षा में प्रार्थी ने यह स्वीकार किया है कि उसे कोई नियुक्ति पत्र नहीं मिला। किंतु तर्क के दौरान और विपक्षी की स्वीकृति के अनुरूप यह प्रकट होता है कि प्रार्थी को प्रदर्श **M-1** साक्षात्कार पत्र के अनुसरण में 85 दिन की अवधि के लिए एक नियुक्ति पत्र जारी किया गया था। प्रार्थी यह कहता है कि प्रदर्श **M-1** पत्र के **A** से **B** और **C** से **D** भाग में किया गया वर्णन सही है और उसने भी इसे पढ लिया था। उल्लेखनीय है कि प्रदर्श **M-1** पत्र के **C** से **D** भाग में यह अंकित है कि "यह नियुक्ति आप को पूर्णतः अस्थाई रूप से 60/85 दिनों के लिए दी जायेगी" प्रार्थी भी स्वीकार करता है कि उसकी नियुक्ति की सीमा 85 दिन होना अंकित है। इसके विपरीत विपक्षी का यह तर्क है कि प्रार्थी ने दिनांक 03.08.2009 को कार्य पर उपस्थित होने के पश्चात दिनांक 13.08.2009 तक ही कार्य किया, इसके बाद वह कार्य करने नहीं आया। इस स्थिति में प्रार्थी पर यह सिद्वीभार आरोपित होता है कि वह दिनांक 13.08.2009 के उपरांत 16.08.2012 तक विपक्षीगण द्वारा किये गये कथित सेवा विस्तार का तथ्य अपने विष्वसनीय साक्ष्य से प्रमाणित करें। प्रार्थी पर ही यह दायित्व आरोपित है कि वह कथित सेवामुक्ति तिथि 16.08.20012 के पूर्ववर्ती एक वर्ष में 240 दिन कार्य करने का तथ्य प्रमाणित करे। अप्रार्थी की ओर से प्रस्तुत निर्णयों रेंज फोरेस्ट ऑफीसर बनाम एस.

टी. हादीमनी, मोहम्मद अली बनाम स्टैट ऑफ हिमाचल प्रदेश तथा स्टेट ऑफ उत्तराखण्ड व अन्य बनाम श्रीमती सुरेशवती के निर्णयों में माननीय सर्वोच्च न्यायालय ने यह विधि प्रतिपादित की है कि सेवा समापन के पूर्ववर्ती एक कलेण्डर वर्ष की अवधि में 240 दिन कार्य किये जाने का तथ्य प्रमाणित करने का दायित्व दावाकर्ता पर है। दावाकर्ता को यह प्रमाणित करने के लिये कि उसने 240 दिन कार्य किया है, पर्याप्त विष्वसनीय साक्ष्य प्रस्तुत करना होगा। मात्र शपथ पत्र प्रस्तुत करना पर्याप्त नहीं है।

16. माननीय सर्वोच्च न्यायालय ने अपने निर्णय डिवीजनल मेनेजर न्यू इंडिया इन्श्योरेंस कम्पनी लिमिटेड बनाम ए. शंकर लिगंम में यह मार्गदर्शन दिया है कि अंशकालीन कर्मकार भी अधिनियम की धारा 2 (**s**) के अंतर्गत कर्मकार है तथा धारा 25 एफ. के प्रावधानों का संरक्षण पाने का अधिकारी है।

17. प्रार्थी ने विपक्षी से सितम्बर, 2009 से अगस्त, 2012 तक प्रार्थी की उपस्थिति और वेतन भुगतान संबंधी अभिलेख को प्रस्तुत करने हेतु दिनांक 07.02.2017 को एक प्रार्थना पत्र प्रस्तुत किया था। इस अधिकरण ने प्रार्थना पत्र स्वीकार करते हुये दिनांक 13.07.2017 को विपक्षी को यह आदेश दिया कि वह वांछित प्रलेख अधिकरण के समक्ष प्रस्तुत करे और यदि प्रलेख उनके आधिपत्य में न हो तो सक्षम अधिकारी का शपथ पत्र प्रस्तुत करे। इस आदेश के अनुपालन में दिनांक 23.01.2018 को विपक्षी की और से श्री मुन्नाराम, मुख्य प्रबंधक ने अपना शपथ पत्र प्रस्तुत करते हुये यह सूचित किया है कि चूंकि जल सेवक केवल गर्मियों में अधिकतम 60/85 दिनों के लिये रखे जाते है और उन्हें हाजरी के अनुसार वेतन भुगतान किया जाता है। प्रार्थी ने केवल दिनांक 03.08.2009 से 13.08.2009 तक ही कार्य किया जिसका भुगतान उसे कर दिया गया। अब कोई दस्तावेज अप्रार्थी निगम की अलवर शाखा के पास उपलब्ध नहीं है। इस संबंध में यह उल्लेख किया जाना सुसंगत है कि प्रार्थी स्वयं अगस्त माह का वेतन प्राप्त होना कहता है, और उसके बाद कोई वेतन नहीं दिया जाना कहता है। ऐसी स्थिति में सितम्बर, 2009 से 16.08.2012 तक वेतन भुगतान का कोई अभिलेख विपक्षी द्वारा संधारित किया जाना संभव ही नहीं है, क्योंकि प्रार्थी को कोई भुगतान ही नहीं हुआ।

18. प्रार्थी ने यह कहा है कि उसकी सेवा में विस्तार दिनांक 16.08.2012 तक विपक्षीगण ने मौखिक रूप से किया। प्रार्थी का यह कथन किसी प्रकार स्वीकार्य नहीं है। क्योकि जब प्रथम नियुक्ति, लिखित आदेश द्वारा विपक्षीगण ने 85 दिन के लिये की तो यह स्वभाविक नहीं है कि सेवा में विस्तार मौखिक रूप से किया गया हो। प्रार्थी का कथन तब ओर अविश्वसनीय लगता है कि जब वह कहता है कि सितम्बर, 2009 से अगस्त, 2012 तक उसे कोई वेतन भुगतान विपक्षीगण ने नहीं किया और वह मौखिक अश्वासन के आधार पर कार्य करता रहा। उसने वेतन भुगतान न किये जाने की कोई लिखित शिकायत भी नहीं की। माननीय सर्वोच्च न्यायालय ने श्रीमती डूलू डेका बनाम स्टेट ऑफ आसाम के निर्णय में यह कहा है कि यह विश्वसनीय नहीं है कि एक व्यक्ति बिना वेतन प्राप्त किये हुये दो दशक तक कार्य करेगा। इसलिए प्रार्थी द्वारा बिना वेतन प्राप्त किये 35 माह तक कार्य करना प्रकृति के सामान्य अनुक्रम मे विश्वसनीय एवं स्वभाविक नहीं लगता।

19. विपक्षी का यह तर्क इस संबंध में सारवान प्रतीत होता है कि प्रदर्श **M-1** पत्र में नियुक्ति हेतु अभ्यर्थी की योग्यता 8वीं पास से अधिक न होना वर्णित है और प्रार्थी यह स्वीकार करता है कि वह जब साक्षात्कार के लिये गया तब वह 10वीं कक्षा उत्तीर्ण था इसलिये उसके मिथ्या कथन के उजागर होने के भय से वह मात्र 10 दिन कार्य करके ही कार्य से अनुपस्थित हो गया।

20. प्रार्थी ने कथित सेवा मुक्ति तिथि से पूर्ववर्ती एक कलेण्डर वर्ष में 240 दिन कार्य करने संबंधी कोई लिखित प्रमाण प्रस्तुत नहीं किया है न ही विपक्षी द्वारा सशपथ असमर्थता व्यक्त करने के उपरांत उसने अपना पक्ष प्रमाणित करने हेतु कोई अन्य/द्वितीयक साक्ष्य भी प्रस्तुत नहीं की है। प्रार्थी की सेवा में विस्तार किये जाने का तथ्य भी किसी साक्ष्य से समर्थित नहीं है। प्रलेखों का अस्तित्व ही प्रमाणित न होने से विपक्षी के विरूद्व प्रलेखों को प्रस्तुत न करने के आधार पर प्रतिकूल उपधारणा किये जाने का कोई औचित्य नहीं है। इस स्थिति में अधिनियम की धारा 25 **F** के प्रावधानों के अनुपालन की नियोजक से अपेक्षा ही उत्पन्न नहीं होती है। इस निर्णय प्राप्त मार्गदर्शन के अनुसार अधिनियम की धारा 2 (**oo**) के अपवाद के रूप में उपधारा (**bb**) उपबंधित है। एक निशचित अवधि के लिये दी गई नियुक्ति उस अवधि के अवसान पर स्वयं समाप्त हो जाती है तथा ऐसी सेवा समाप्ति छंटनी की परिभाषा में नहीं आती। इसलिए प्रार्थी की सेवा समाप्ति को छंटनी नहीं कहा जा सकता। इस स्थिति में यह सुसंगत नहीं रहता कि प्रार्थी ने सेवामुक्ति के पूर्व एक वर्ष की अवधि में 240 दिन कार्य किया है या नहीं। यद्वपि प्रार्थी अपने साक्ष्य से इस तथ्य को भी प्रमाणित करने में सफल नहीं हुआ है। अतः यह बिन्दु प्रार्थी के विरूद्व निर्णीत किया जाता है।

21. <u>विचारणीय बिन्दु संख्या–2</u>

22. प्रार्थी आशीष शर्मा ने अपने शपथ पत्र में यह कहा है कि उससे जूनियर श्रमिक को विपक्षी प्रबंधन ने कार्य पर रखा है और कैजुअल श्रमिकों की कोई वरीयता सूची नहीं बनाई। किंतु प्रार्थी ने अपने साक्ष्य में उस कनिष्ठ व्यक्ति का नाम और नियुक्ति आदेश भी प्रस्तुत नहीं किया है जिससे यह अवधारित हो कि प्रार्थी से कनिष्ठ कोई ऐसा कर्मचारी रहा और उसे विपक्षी द्वारा नियुक्ति दे दी गई हो। प्रार्थी का मात्र 10 दिन विपक्षी के अधीन कार्य करना प्रमाणित हुआ है। और उसकी अधिकतम अवधि 85 दिन हो सकती थी, इस स्थिति में निश्चित अवधि की संविदा पर नियुक्त कर्मचारी हेतु कोई वरीयता सूची तैयार किया जाना आवश्यक नहीं है। इस तथ्यात्मक परिदृष्य में प्रार्थी यह प्रमाणित नहीं कर सका है कि उससे कनिष्ठतर किसी व्यक्ति को विपक्षीगण ने प्रार्थी को सेवामुक्त करने के उपरांत नियोजन में रखा हो। अतः यह बिन्दु प्रार्थी के विरूद्व निर्णीत किया जाता है।

23. <u>अनुतोषः</u>

24. अभिभाषक प्रार्थी ने माननीय सर्वोच्च न्यायालय द्वारा पारित निर्णय तमिलनाडू टर्मिनेटिड फुलटाईम टेम्परेरी एल.आई.सी. एम्पलाईज ऐसोसियेशन बनाम एल.आई.सी. ऑफ इंडिया में पारित निर्णय की ओर ध्यान आकर्षित करते हुये यह कहा है कि इस निर्णय में माननीय सर्वोच्च न्यायालय ने राष्टीय औद्योगिक अधिकरण द्वारा पारित अवार्ड दिनांक 17.04.1981 एवं 26.08.1988 के अंतर्गत अंशकालीन कर्मचारियों जिन्होंने 85 दिन कार्य विपक्षी निगम के अधीन कार्य किया हो उन्हें नियमित नियोजन हेतु विचारित करने का निर्देश दिया गया है। इसलिए प्रार्थी को नियमित नियोजन हेतु विचारित किया जाना चाहिये। मैंने इस निवेदन पर विचार किया तो यह पाया कि इस विवाद में प्रार्थी द्वारा मात्र 10 दिन विपक्षी के अधीन वर्ष 2009 में कार्य किया जाना प्रमाणित हुआ है, और प्रार्थी ने अपने दावे में नियमित नियोजन हेतु विचारित करने का अनुतोष भी नही मांगा है। यहॉ यह भी उल्लेख किया जाना आवष्यक है कि समुचित सरकार द्वारा प्रेषित विवाद में प्रार्थी की सेवा में नियमित नियोजनकी अधिकारिता का बिन्दु न्यायनिर्णयन हेतु संदर्भित नहीं किया गया है। मात्र दिनांक 16.08.2012 को कथित रूप से पारित मौखिक सेवा समाप्ति आदेश की वैधता का ही परीक्षण किया जाना अपेक्षित है। इसलिए तथ्यात्मक भिन्नता के कारण इस निर्णय में पारित विधि को मैं ससम्मान प्रार्थी के पक्ष में सुसंगत नहीं पाता हूॅ।

25. विचारणीय बिन्दु संख्या 1 व 2 पर पारित विनिश्चय के अनुसार प्रार्थी की सेवा समाप्ति अवैध छंटनी के रूप में किया जाना प्रमाणित नहीं हुआ है। क्योंकि प्रार्थी को एक निश्चित अवधि तक ही नियोजित किया गया था और उस अवधि के समापन पर प्रार्थी की सेवा स्वतः समाप्त हो गयी। इसलिये प्रार्थी विपक्षीगण से अधिनियम के प्रावधानों के अंतर्गत कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

26. संदर्भित विवाद का निस्तारण इसी प्रकार किया जाता है।

27- अधिनिर्णय की प्रतिलिपि औद्योगिक विवाद अधिनियम, 1947 की धारा 17 (1) के अनुसरण में प्रकाशनार्थ प्रेषित की जावें।

28- न्यायालय द्वारा अधिनिर्णय आज दिनांक 25.07.2024 को सुनाया गया।

राधामोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 30 सितम्बर, 2024

का.आ. 1886.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार <u>गैरीसन इंजीनियर (उपयोगिता), सैन्य इंजीनियरिंग सेवाएँ</u> पंचकुला (एचआर) के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (20/2016) प्रकाशित करती है।

[फा. सं. एल - 12025/01/2024- आई आर (बी-I)-213]

सलोनी, उप निदेशक

New Delhi, the 30th September, 2024

S.O. 1886.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.20/2016*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* ***Chandigarh-II*** as shown in the Annexure, in the industrial dispute between the management of **Garrison Engineer (Utility), Militray Engineering Service,Panchkula (HR)** and their workmen.

[F. No. L-12025/01/2024- IR (B-I)-213]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Mr. Kamal Kant, Presiding Officer.

ID No.20/2016
Registered on:-16.06.2016
Sh. Anil Kumar S/o Sh. Ram Kishan, R/o Khadak Mangoli, Gate No.3, Old Panchkula, District Panchkula(HR).

……..Workman

Versus

Garrison Engineer(Utility), Military Engineering Services, Chandimandir, District Panchkula(HR).

…….Respondent/Management

AWARD

Passed on:-06.03.2024

1. The workman Anil Kumar has filed the present claim petition under Section 2-A of the Industrial Disputes Act, 1947(hereinafter called as 'Act') with the averment that he was interviewed and selected and recommended to be appointed as Mazdoor by a Selection Committee constituted by G.E. and was appointed as such in April 2002. After due Police Verification, he was allowed to join on 7.5.2002. His working hours were from 8 am to 5 pm daily with a break of one hour for lunch. He was employed as Plumber w.e.f. 1.1.2009. It was usual practice in G.E.(U), Chandimandir that initially civilian employees are appointed on temporary basis, paid less than the prescribed rates, performance used to be observed and only then regularized on the job after having observed the performance of duties, work, conduct etc. for about one year. He was also assured at the time of his initial appointment/joining that he would be regularized as and when vacancies are sanctioned and notified in future on a regular scales of pay. He was being paid only Rs.50/- per day which was much less as prescribed under the Minimum Wages Act by the Government and whenever he made a demand for minimum wages/more pay he was threatened with termination of his employment and even threatened that he would not be regularized. His pay was increased from Rs.1500/- in 2002 to Rs.6000/- per month in 2015. He was discharging duties sincerely and honestly. The management did not take any steps to regularize his service despite of the fact that the regular posts of Mazdoor or Plumber, later on of Mates as well as Plumbers were existing and were vacant. The respondent/ management used the policy of hire and fire and as on date there are 10-15 Plumbers but still some vacancies are lying vacant. He made representations to the G.E.(U), Chandimandir through J.E. and A.G.E. concerned many times to enhance the wages and regularize his services as per the promise given at the time of his joining but every time rather than taking any action on the requests made he met with threat of termination of service. All his requests fell on the deaf ears. His services were terminated on 7.8.2015 without any notice of termination and without any compensation in lieu thereof. On 7.8.2015 he received one sentence verbal order that his services are terminated and he need not to come on duty w.e.f. 8.8.2015 by Sh. V.K. Sharma, A.G.E. a subordinate of G.E.(U), Chandimandir. He was also not given the salary for the month of August 2015. The respondent-management falls under the definition of Industry and he is the workman under the definition of Industrial Disputes Act. There was no compliance of Section 25-F of the Industrial Disputes Act neither any notice or any pay/wages in lieu thereof was given nor any retrenchment compensation was paid. The juniors were retained in service and he was terminated from service which is violation of Section 25-G of the ID Act. He demand Rs.2,77,520/- towards back wages along with interest @12% and reinstatement in service.

2. Respondent/management has filed its written statement, alleging therein that there are two types of employees i.e. Combatants and Civilians and not Civilian(Contractual). Daily wagers are employed through contractors and they are not the employees of the management. It is denied that workman was interviewed and selected and appointed as Mazdoor by Selection Committee. The workman was never employed by the management so the question of termination of services without any notice and any compensation does not arise. The management does not fall under the definition of Industry as the office of the management is under the control and administration of Ministry of Defence and the same being under the Central Government of India, the question of falling the management under the definition of Industry does not arise. The management has not violated the provisions of Section 25-F of the ID Act.

Since the workman was never worked with the management, the question of payment of money in lieu of three months notice does not arise. Therefore, the present claim statement is liable to be dismissed being devoid of merits in the interest of justice.

3. The workman filed replication to the written statement filed by the management, alleging therein that he was employed and worked as Mazdoor/Plumber for the management from 7.5.2002 to 8.8.2015 and was paid Rs.50/p per day from the day of joining which was revised from time to time and was being paid Rs.6000/- when his services were terminated in the month of August, 2015. He was not paid for the period from 1.8.2015 to 8.8.2015. No money in lieu of three months notice was paid to him.

4. It is pertinent to mention here that the management was proceeded ex parte on 16.11.2016 and the management has filed an application for setting aside the ex parte order dated 16.11.2016 to which reply was filed by the workman and the ex parte order dated 16.11.2016 passed against the management was set aside by my Ld. Predecessor on the payment of cost of Rs.300/- on 31.05.2017.

5. Parties were given opportunity to lead evidence.

6. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A along with documents i.e. Temporary Pass and work order slip(colly) and has been cross-examined by the learned counsel of management. The workman has also examined WW2 Sh. Mohd. Yamin, who filed his affidavit in evidence as Ex.WW2/A, WW3 Raman Kumar who filed his affidavit in evidence as Ex.WW3/A, WW4 Gulshan Ali who filed his affidavit in evidence as Ex.WW4/A and WW5 Mohd. Aslam who filed his affidavit in evidence as Ex.WW5/A and were cross-examined by the learned counsel of management.

7. The management has examined MW1 Sh. Ashish Yadav, working as AGE E/M-II in the office of Garrison Engineer(Utility) Chandimandir, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned AR of workman.

8. The workman filed written arguments, alleging therein that there are three types of employees i.e. Combatants, Civilian(Regular) and Civilian(Contractual) apart from daily wagers employed through contractors. There were about 250-260 civilian employees(regular as well as contractual) working under GE(U) Chandimandir. He was interviewed, selected and recommended to be appointed as Mazdoor by a Selection Committee constituted by G.E. and was appointed as such in April 2002 after due police verification and was allowed to join on 7.5.2002 from 8 am to 17 pm daily with a break of one hour for lunch. The workman was employed as Plumber w.e.f. 1.1.2009. The workman was assured at the time of initial appointment/joining that he would be regularized as and when vacancies are sanctioned and notified in future on a regular scales of pay. The workman discharging his duties sincerely and honestly and his superiors never had any occasion to point out or having been found wanting. He had to work under strict military discipline in that when he used to enter/exit in/out of the Cantonment his Pass/I-card used to be checked and J.E. used to take daily attendance with time and date. Earlier Pass/I-Card used to made and issued by AGE and later on it was used to be issued by Station Headquarters, Chandimandir. Management was taking work for nine hours a day(including one hour break) from workman but was neither paying the minimum wages prescribed and notified from time to time by the Govt. nor any weekly holidays, any type of casual leave or earned leave was being given. The workman filed his affidavit in evidence and similarly four more witnesses were examined and cross-examined. All the witnesses have supported the version that there were three types of employees viz. Combatants, Civilian(Regular) and Civilian(Contractual) apart from daily wagers employed through Contractors and there were about 250-260 civilian employees working under GE(U) Chandimandir. Lone witness of the management is Assistant Garrison Engineer(AGE) who though posted on the incumbent post only December 2017 i.e. much after the period of workman's employment with management from 7.5.2002 to 7.8.2015 but claims to be in full knowledge of the case and hence competent to deposit. He denied of having any contractual employee like workman because management gives all maintenance works to Contractor and do not deal directly with contractual employees. The names of the contractors who were awarded such contract from 2002 to 2015 not given by the management and their date of contract/agreement, tenure of agreement, terms and conditions of agreement liability default or otherwise are not given. Assuming for the sake of argument that workman was employee of contractor as to how come same contractor continued from more than thirteen years from 7.5.2002 to 8.8.2015. It is a settled principle of law that if the facts are not specifically pleaded nor denied in pleadings are deem to be admitted facts and there is no question of its proof by oral or documentary evidence nor any such documentary of otherwise evidence is placed on record. The workman has placed on record complaint slips which are more than 130 in number for the period from 2007 to 2011, which belongs to management having Docket Machine Numbers duly singed by the incumbent Junior Engineers(E/M) at the relevant time. By these signed slips, works/daily duties used to be assigned to the workman giving details of the nature of complaint, building number and location, individual tradesman detailed for the job and were required to be deposited back in the Service Centre on completion of job. These complaint slips conclusively prove that the workman was the employee of the management and the works/duties used to be allotted was supervised and monitored by JR(E/M) of the management. The workman has placed reliance to the judgment titled as ***Ram Singh and others Vs. Union Territory Chandigarh and others, Civil Appeal No.3166/2002, decided on 07.11.2003***, which deals with the

relationship between employer and employee/master and servant and forum for deciding nature of employment of workman with establishment and contractors.

9. The management filed written arguments, alleging therein that there are two types of employees i.e. Combatants and Civilians and not Civilian(Contractual). The daily wagers are employed through contractors and thus, they are not the employees of the management. The workman was never appointed by the management and thus, no payment has ever been made to the defence accounts and the workman should be asked to prove the same with cogent evidence. The workman requested for experience certificate with a request that he can work with any other contract/contractor and accordingly the experience certificate was issued with specific work that on contractual basis that means they are working under contractors and they were paid by the different contractors. The MES was issuing temporary entry passes for workers of contractors as well as to the dependents of MES employees. Dut to security, this practice was stopped by Station HW and direction was issued that security passes shall be issued by Station HQ and police verification was also the requirement of Station HQ. CMP persons started checking all the persons including deployed by the contractors on installations. Therefore, to overcome the problem, all the persons were asked to give an application so that it can be forwarded to the respective police verification. The present claim petition filed by the workman is liable to be dismissed in the interest of justice.

10. I have heard learned counsels for the parties and have gone through the entire evidence placed on file by the parties as well as written arguments filed by both the parties.

11. It is added here, it is the case of the workman that it was usual practice in respondent-management that initially civilian employees are employed on temporary basis and paid less than the prescribed rates and after observing the performance, the workman are regularized on job after one year. He was paid Rs.50/- per day. Thus, workman claims himself to be appointed on temporary daily wages. The first question is required to be determined is whether the claimant is a workman even if he was appointed on temporary daily wages and was drawing Rs.50/- per day. To my mind, the claimant is a workman within the definition of Section 2(S). In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

12. The real controversy lies between the parties with respect to the relationship of workman with management. The issue as to whether the workman was engaged by the employer/management directly or through contractors is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of their appointment or engagement for that period to show that he had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.***

13. Question remains to be seen whether claimant/workman Anil Kumar has proved that he was directly engaged by the management on 7.5.2002 and served till his termination on 7.8.2015. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single reliable document to prove that workman/claimant was directly employed by the management. In this connection, workman Anil Kumar has accepted that neither any appointment letter nor any termination letter was issued by the respondent-management. Undoubtedly, witness examined by the respondent-management namely Ashish Yadav, AGE E/M-II, Garrison Engineer(Utility) Chandimandir has categorically stated in his evidence that the claimant/workman was not employed by the management as such, neither notice nor retrenchment compensation was given by management.

14. The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer as follows:-

1) Whether the principal employer pays the salary instead of contractor and

2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been specifically stated in the claim petition of the workman. In fact, claim petition is totally silent regarding the payment of wages, salary, letter of appointment or anything likewise. Similarly, workman has not mentioned anything regarding the mode of payment of wages, salaries etc. in his affidavit. Thus, this basic features for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the workman.

15. WW1 Anil Kumar has stated in his cross-examination that he was paid salary by the JE of the Department in cash and signatures were obtained in a register. Salary slip was not issued to the workman. It appears that workman has taken the above plea just to cover up his case that he was employed by the respondent-management. Actually the workman was not employed by the respondent-management as it is his case that he was interviewed, selected and recommended as Mazdoor by a Selection Committee constituted by G.E. and joined as such on 7.5.2002. His police verification was also done. The said statement of him also seemed to be afterthought because had he been interviewed, selected and recommended to be appointed as Mazdoor. He could have summoned the documents from the respondent-management by filing an application but he has not summoned the documents which clearly shows that he was not getting any wages from the respondent-management nor he was appointed by the respondent-management.

16. Secondly, so far as the question of controls and supervision is concerned. Workman has categorically stated that his work was controlled and supervised by the officials of the management. To this effect, he has placed on record the temporary entry pass and complaint slips. Except this, nothing is brought on record to prove that it is management who were supervising and controlling the work of claimant/workman. The apex court while explaining the factor of supervision and control in the case of ***International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]*** has held as follows:-

> ***"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.***
>
> ***The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."***

17. Thus, the principal enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the claimant/workman is mum on this score and workman has not mentioned any specific averment in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by the management. There is nothing on record to prove that it is the management who grant the leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the execution of the work as alleged by the witness may not be called effective and absolute control. Such control is being emphasized to control the work of the management for a specific work in efficient manner done by the management in the establishment. So far as the photocopies of complaint slips and entry pass placed on record by the workman are concerned, they have also not been proved by calling the concerned official from the respondent-management. Moreover, from these slips and entry pass, it cannot be said that workman was working under the control and supervision of the respondent-management. So far as case law of ***Ram Singh and others(supra)*** referred by the learned AR for the workman is concerned, it stated that control by employer is only one factor to determine relation between employer and employees along with many other interrelated factors.

18. Undoubtedly, in Tribunal cases, has to be decided on the basis of the preponderance of probability and not the proof beyond reasonable doubt. So far as this case is concerned, there is no documentary evidence on record to prove the factum of direct employment of workman with the management. In any way nothing is on record with respect of

the payment of salary, attendance register or work done by the claimant/workman during the course of alleged employment with the management. There is nothing mentioned in the claim petition as well as affidavit of the workman that who was the person-concerned by which he was directly engaged in the respondent-management of Garrison Engineer, Chandimandir. I am of the considered opinion that mere saying that he was employed by the Selection Committee constituted by G.E. and was appointed as Mazdoor which is clearly not proved by the workman. Thus, it may be observed that there is nothing conclusive either oral or documentary to prove that it was principal-employer Garrison Engineer, Chandimandir who controls and supervise the work of the workman. Workman Anil Kumar has examined four witnesses WW2 Mohd. Yamin, WW3 Raman Kumar, WW4 Gulshan Ali and WW5 Mohd. Aslam, their testimonies are of similar nature as that of workman. They all had also stated that salary was paid to them also by the J.E. of the department in cash. They had also admitted that there was no advertisement at the time of their joining. They had not submitted any form or application for the job. There was no call letter for joining the service. They are also daily wager like the workman and as such, their statements are also of no use to prove the case of workman.

19. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that management has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of the management contended that workman in fact was not the employee of the establishment as such, neither he is terminated by the management nor such notice and compliance of Section 25-F of the Act is required by the establishment. In this connection, learned counsel of the management has placed reliance in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal(Civil) No.1851 of 2002, decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 od 2004, decided on 13.09.2004*** as well as ***State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No.6306-6316 of 2003 decided on 14.03.2005.*** Learned counsel of the workman contended that workman is rendering his services with the management for so many years and he had completed 240 days in the year 7.8.2015 before termination by the management. As per pleading of the workman he was terminated from 7.8.2015 without compliance of Section 25-F of the ID Act. It is pertinent to mention that pleadings required specific averments with respect to the facts alleged in it. It is not specifically pleaded that workman was retrenched/terminated by the management in preceding year i.e. on 7.8.2015 even he had rendered 240 days of service in the management. Thus, there is no specific pleading with respect to the working of 240 days in preceding year of the alleged termination. In the affidavit even there is no mention that the workman has worked for 240 days in the preceding year i.e. on 7.8.2015. Thus, this is a general assertion for rendering services with the management rather specific averments with respect to the 240 days in the preceding year before the termination. Thus, claim petition as well as affidavit filed by the workman is not very specific with respect to 240 days working in the establishment. In the light of the specific denial by the management for rendering services with the management, burden lies on the workman to prove this fact. The workman has failed to prove it. Thus, there is no necessity of issuing any show cause notice to the workman.

20. The claimant/workman has also claimed in his claim petition as well as in his affidavit and even in his cross-examination that Junior Engineer had given oral assurance for regularization in the department. In this regard, it is pertinent to mention here that he cannot have been regularized in the department as in those cases where the case fall under the definition of industrial dispute as mentioned under Section 2(k) of the ID Act only then regularization can be made. Section 2(k) of the ID Act defines "industrial dispute", which reads as under:

> ***"2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-***
>
> ***x x x x***
>
> ***(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"***

And ID Act was amended adding Section 2A making individual dispute of a workman as an industrial dispute, if the dispute is related to dismissal, discharge, retrenchment or termination of individual workmen. Thus, Section 2A carves an exception to the definition of individual dispute as given in Section 2(k) of the ID Act. Thus, in order to give jurisdiction to the appropriate government to refer the dispute to the Tribunal/Labour Court, it was essential for the workman to show that his individual dispute for regularization was sponsored or espoused by the union of the workmen. The five Bench of the Apex Court in the case of ***Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), Civil Appeal No.532/1963, decided on 16.03.1965***, also support the above view.

21. The Hon'ble Karnatana High Court in the case titled as ***Prakash and Ors. Vs. Superintending Engineer(Electrical), O and M Circle, Belgaum and Ors., Writ Petition Nos.41747-757/1999, decided on***

31.03.2000, has taken a view that the individual workman cannot raise a dispute with regard to absorption and regularization.

22. The Delhi High Court in the case of ***Management of Hotel Samrat and Ors. Vs. Government of NCT and Ors., Writ Petition(C) No.6247 & 6682/2002, decided on 04.01.2007***, has taken a similar view that in order to be an industrial dispute, it has to satisfy the definition of Section 2(k) of the ID Act.

23. In view of the above discussion, this Tribunal is of the firm view that there is no merit in the case and the same is liable to be dismissed.

24. Let copy of the award be sent to the Central Government for publication as required under Section 17(1) of the Act.

Date : 6.3.2024

KAMAL KANT, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2024

का.आ. 1887.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गैरीसन इंजीनियर (उपयोगिता), सैन्य इंजीनियरिंग सेवाएँ ,पंचकुला (एचआर) के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (21/2016) प्रकाशित करती है।

[फा. सं. एल -12025/01/2024- आई आर (बी-I)-214]

सलोनी, उप निदेशक

New Delhi, the 30th September, 2024

S.O. 1887.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.21/2016*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* ***Chandigarh-II*** as shown in the Annexure, in the industrial dispute between the management of **Garrison Engineer (Utility), Militray Engineering Service,Panchkula (HR)** and their workmen.

[F. No. L-12025/01/2024- IR (B-I)-214]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Mr. Kamal Kant, Presiding Officer.

ID No.21/2016
Registered on:-16.06.2016
Sh. Raman Kumar S/o Sh. Tarsem Chand, R/o H.No.137, Ganesh Vihar, Village Dhakoli, Tehshil Derabassi, SAS Nagar Mohali(Pb).

……..Workman

Versus

Garrison Engineer(Utility), Military Engineering Services, Chandimandir, District Panchkula(HR).

…….Respondent/Management

AWARD

Passed on:-06.03.2024

1. The workman Raman Kumar has filed the present claim petition under Section 2-A of the Industrial Disputes Act, 1947(hereinafter called as 'Act') with the averment that he was interviewed and selected and recommended to be appointed as Pump Operator by a Selection Committee constituted by G.E. and was appointed as such in August 1999. After due Police Verification, he was allowed to join on 1.9.1999. His working hours were from 8 am to 5 pm daily with a break of one hour for lunch. It was usual practice in G.E.(U), Chandimandir that initially civilian employees are appointed on temporary basis, paid less that the prescribed rates, performance used to be observed and only then regularized on the job after having observed the performance of duties, work, conduct etc. for about one year. He was also assured at the time of his initial appointment/joining that he would be regularized as and

when vacancies are sanctioned and notified in future on a regular scales of pay. He was being paid only Rs.50/- per day which was much less as prescribed under the Minimum Wages Act by the Government and whenever he made a demand for minimum wages/more pay he was threatened with termination of his employment and even threatened that he would not be regularized. His pay was increased from Rs.1500/- in 1999 to Rs.8000/- per month in 2015. He was discharging his duties sincerely and honestly. The management did not take any steps to regularize his service despite of the fact that the regular posts of Pump Operators were existing and were vacant. The respondent/ management used the policy of hire and fire and as on date there are 10-12 Pump Houses and there are about 30-36 Pump Operators but still some vacancies are lying vacant. He made representations to the G.E.(U), Chandimandir through J.E. and A.G.E. concerned many times to enhance the wages and regularize his services as per the promise given at the time of his joining but every time rather than taking any action on the requests made he met with threat of termination of service. All his requests fell on the deaf ears. His services were terminated on 7.8.2015 without any notice of termination and without any compensation in lieu thereof. On 7.8.2015 he received one sentence verbal order that his services are terminated and he need not to come on duty w.e.f. 8.8.2015 by Sh. V.K. Sharma, A.G.E. a subordinate of G.E.(U), Chandimandir. He was also not given the salary for the month of August 2015. The respondent-management falls under the definition of Industry and he is the workman under the definition of Industrial Disputes Act. There was no compliance of Section 25-F of the Industrial Disputes Act neither any notice or any pay/wages in lieu thereof was given nor any retrenchment compensation was paid. The juniors were retained in service and he was terminated from service which is violation of Section 25-G of the ID Act. He demand Rs.6,30,720/- towards back wages along with interest @12% and reinstatement in service.

2. Respondent/management has filed its written statement, alleging therein that there are two types of employees i.e. Combatants and Civilians and not Civilian(Contractual). Daily wagers are employed through contractors and they are not the employees of the management. It is denied that workman was interviewed and selected and appointed as Mazdoor by Selection Committee. The workman was never employed by the management so the question of termination of services without any notice and any compensation does not arise. The management does not fall under the definition of Industry as the office of the management is under the control and administration of Ministry of Defence and the same being under the Central Government of India, the question of falling the management under the definition of Industry does not arise. The management has not violated the provisions of Section 25-F of the ID Act. Since the workman was never worked with the management, the question of payment of money in lieu of three months notice does not arise. Therefore, the present claim statement is liable to be dismissed being devoid of merits in the interest of justice.

3. The workman filed replication to the written statement filed by the management, alleging therein that he was employed and worked as Pump Operator for the management from 1.9.1999 to 8.8.2015 and was paid Rs.50/- per day from the day of joining which was revised from time to time and was being paid Rs.8000/- when his services were terminated in the month of August, 2015. He was not paid for the period from 1.8.2015 to 8.8.2015. No money in lieu of three months notice was paid to him.

4. It is pertinent to mention here that the management was proceeded ex parte on 16.11.2016 and the management has filed an application for setting aside the ex parte order dated 16.11.2016 to which reply was filed by the workman and the ex parte order dated 16.11.2016 passed against the management was set aside by my Ld. Predecessor on the payment of cost of Rs.300/- on 31.05.2017.

5. Parties were given opportunity to lead evidence.

6. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A and has been cross-examined by the learned counsel of management. The workman has also examined WW2 Sh. Mohd. Yamin, who filed his affidavit in evidence as Ex.WW2/A, WW3 Anil Kumar who filed his affidavit in evidence as Ex.WW3/A, WW4 Gulshan Ali who filed his affidavit in evidence as Ex.WW4/A and WW5 Mohd. Aslam who filed his affidavit in evidence as Ex.WW5/A and were cross-examined by the learned counsel of management.

7. The management has examined MW1 Sh. Ashish Yadav, working as AGE E/M-II in the office of Garrison Engineer(Utility) Chandimandir, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned AR of workman.

8. The workman filed written arguments, alleging therein that there are three types of employees i.e. Combatants, Civilian(Regular) and Civilian(Contractual) apart from daily wagers employed through contractors. There were about 250-260 civilian employees(regular as well as contractual) working under GE(U) Chandimandir. He was interviewed, selected and recommended to be appointed as Pump Operator by a Selection Committee constituted by G.E. and was appointed as such in August 1999 after due police verification and was allowed to join on 1.9.1999 from 8 am to 17 pm daily with a break of one hour for lunch. The workman was assured at the time of initial appointment/joining that he would be regularized as and when vacancies are sanctioned and notified in future on a regular scales of pay. The workman discharging his duties sincerely and honestly and his superiors never had any occasion to point out or having been found wanting. He had to work under strict military discipline in that when he used to enter/exit in/out of the Cantonment his Pass/I-card used to be checked and J.E. used to take daily attendance with time and date. Earlier Pass/I-Card used to made and issued by AGE and later on it was used to be issued by Station Headquarters,

Chandimandir. Management was taking work for nine hours a day(including one hour break) from workman but was neither paying the minimum wages prescribed and notified from time to time by the Govt. nor any weekly holidays, any type of casual leave or earned leave was being given. The workman filed his affidavit in evidence and similarly four more witnesses were examined and cross-examined. All the witnesses have supported the version that there were three types of employees viz. Combatants, Civilian(Regular) and Civilian(Contractual) apart from daily wagers employed through Contractors and there were about 250-260 civilian employees working under GE(U) Chandimandir. Lone witness of the management is Assistant Garrison Engineer(AGE) who though posted on the incumbent post only December 2017 i.e. much after the period of workman's employment with management from 1.9.1999 to 7.8.2015 but claims to be in full knowledge of the case and hence competent to deposit. He denied of having any contractual employee like workman because management gives all maintenance works to Contractor and do not deal directly with contractual employees. The names of the contractors who were awarded such contract from 1999 to 2015 not given by the management and their date of contract/agreement, tenure of agreement, terms and conditions of agreement liability default or otherwise are not given. Assuming for the sake of argument that workman was employee of contractor as to how come same contractor continued from 1.9.1999 to 8.8.2015. It is a settled principle of law that if the facts are not specifically pleaded nor denied in pleadings are deem to be admitted facts and there is no question of its proof by oral or documentary evidence nor any such documentary of otherwise evidence is placed on record. The workman has placed on the record complaint slips which are more than 130 in number for the period from 2007 to 2011, which belongs to the respondent-management having Docket Machine Numbers duly singed by the incumbent Junior Engineers(E/M) at the relevant time. By these signed slips, works/daily duties used to be assigned to the workman giving the details of the nature of complaint, building number and location, individual tradesman detailed for the job and were required to be deposited back in the Service Centre on completion of job. These complaint slips conclusively prove that the workman was the employee of the management and the works/duties used to be allotted was supervised and monitored by JR(E/M) of the management. The workman has placed reliance to the judgment titled as ***Ram Singh and others Vs. Union Territory Chandigarh and others, Civil Appeal No.3166/2002, decided on 07.11.2003***, which deals with the relationship between employer and employee/master and servant and forum for deciding nature of employment of workman with establishment and contractors.

9. The management filed written arguments, alleging therein that there are two types of employees i.e. Combatants and Civilians and not Civilian(Contractual). The daily wagers are employed through contractors and thus, they are not the employees of the management. The workman was never appointed by the management and thus, no payment has ever been made to the defence accounts and the workman should be asked to prove the same with cogent evidence. The workman requested for experience certificate with a request that he can work with any other contract/contractor and accordingly the experience certificate was issued with specific work that on contractual basis that means they are working under contractors and they were paid by the different contractors. The MES was issuing temporary entry passes for workers of contractors as well as to the dependents of MES employees. But to security, this practice was stopped by Station HW and direction was issued that security passes shall be issued by Station HQ and police verification was also the requirement of Station HQ. CMP persons started checking all the persons including deployed by the contractors on installations. Therefore, to overcome the problem, all the persons were asked to give an application so that it can be forwarded to the respective police verification. The present claim petition filed by the workman is liable to be dismissed in the interest of justice.

10. I have heard learned counsels for the parties and have gone through the entire evidence placed on file by the parties as well as written arguments.

11. It is added here, it is the case of the workman that it was usual practice in respondent-management that initially civilian employees are employed on temporary basis and paid less than the prescribed rates and after observing the performance, the workman are regularized on job after one year. He was paid Rs.50/- per day. Thus, the workman claims himself to be appointed on temporary daily wages. The first question is required to be determined is whether the claimant is a workman even if he was appointed on temporary daily wages and was drawing Rs.50/- per day. To my mind, the claimant is a workman within the definition of Section 2(S). In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532***, wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

12. The real controversy lies between the parties with respect to the relationship of workman with management. The issue as to whether the workman was engaged by the employer/management directly or through contractors is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of their appointment or engagement for that period to show that he had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.***

13. Question remains to be seen whether claimant/workman Raman Kumar has proved that he was directly engaged by the management on 1.9.1999 and served till his termination on 7.8.2015. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single reliable document to prove that workman/claimant was directly employed by the management. In this connection, workman Raman Kumar has accepted that neither any appointment letter nor any termination letter was issued by the respondent-management. Undoubtedly, witness examined by the respondent-management namely Ashish Yadav, AGE E/M-II, Garrison Engineer(Utility) Chandimandir has categorically stated in his evidence that the claimant/workman was not employed by the management as such, neither notice nor retrenchment compensation was given by management.

14. The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer as follows:-

1) Whether the principal employer pays the salary instead of contractor and

2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been specifically stated in the claim petition of the workman. In fact, claim petition is totally silent regarding the payment of wages, salary, letter of appointment or anything likewise. Similarly, workman has not mentioned anything regarding the mode of payment of wages, salaries etc. in his affidavit. Thus, this basic features for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the workman.

15. WW1 Raman Kumar has stated in his cross-examination that he was paid salary by the JE of the Department in cash and signatures were obtained in a register. Salary slip was not issued to the workman. It appears that workman has taken the above plea just to cover up his case that he was employed by the respondent-management. Actually the workman was not employed by the respondent-management as it is his case that he was interviewed, selected and recommended as Pump Operator by a Selection Committee constituted by G.E. and joined as such on 1.9.1999. His police verification was also done. The said statement of him also seemed to be afterthought because had he been interviewed, selected and recommended to be appointed as Pump Operator. He could have summoned the documents from the respondent-management by filing an application but he has not summoned the documents which clearly shows that he was not getting any wages from the respondent-management nor he was appointed by the respondent-management.

16. Secondly, so far as the question of controls and supervision is concerned. Workman has categorically stated that his work was controlled and supervised by the officials of the management. To this effect, he has placed on record the temporary entry pass and complaint slips. Except this, nothing is brought on record to prove that it is management who were supervising and controlling the work of claimant/workman. The apex court while explaining the factor of supervision and control in the case of ***International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]*** has held as follows:-

> ***"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.***
>
> ***The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the***

employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

17. Thus, the principal enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the claimant/workman is mum on this score and workman has not mentioned any specific averment in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by the management. There is nothing on record to prove that it is the management who grant the leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the execution of the work as alleged by the witness may not be called effective and absolute control. Such control is being emphasized to control the work of the management for a specific work in efficient manner done by the management in the establishment. Therefore, it cannot be said that workman was working under the control and supervision of the respondent-management. So far as the case law of ***Ram Singh and other(supra)*** referred by the learned AR for the workman is concerned, it stated that control by employer is only one factor to determine relation between employers and employees along with many other interrelated factors.

18. Undoubtedly, in Tribunal cases, has to be decided on the basis of the preponderance of probability and not the proof beyond reasonable doubt. So far as this case is concerned, there is no documentary evidence on record to prove the factum of direct employment of workman with the management. In any way nothing is on record with respect of the payment of salary, attendance register or work done by the claimant/workman during the course of alleged employment with the management. There is nothing mentioned in the claim petition as well as affidavit of the workman that who was the person-concerned by which he was directly engaged in the respondent-management of Garrison Engineer, Chandimandir. I am of the considered opinion that mere saying that he was employed by the Selection Committee constituted by G.E. and was appointed as Pump Operator which is clearly not proved by the workman. Thus, it may be observed that there is nothing conclusive either oral or documentary to prove that it was principal-employer Garrison Engineer, Chandimandir who controls and supervise the work of the workman. Workman Raman Kumar has examined four witnesses WW2 Mohd. Yamin, WW3 Anil Kumar, WW4 Gulshan Ali and WW5 Mohd. Aslam, their testimonies are of similar nature as that of workman. They all had also stated that salary was paid to them also by the J.E. of the department in cash. They had also admitted that there was no advertisement at the time of their joining. They had not submitted any form or application for the job. There was no call letter for joining the service. They are also daily wager like the workman and as such, their statements are also of no use to prove the case of workman.

19. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that management has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of the management contended that workman in fact was not the employee of the establishment as such, neither he is terminated by the management nor such notice and compliance of Section 25-F of the Act is required by the establishment. In this connection, learned counsel of the management has placed reliance in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal(Civil) No.1851 of 2002, decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 od 2004, decided on 13.09.2004*** as well as ***State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No.6306-6316 of 2003 decided on 14.03.2005.*** Learned counsel of the workman contended that workman is rendering his services with the management for so many years and he had completed 240 days in the year 7.8.2015 before termination by the management. As per pleading of the workman he was terminated from 7.8.2015 without compliance of Section 25-F of the ID Act. It is pertinent to mention that pleadings required specific averments with respect to the facts alleged in it. It is not specifically pleaded that workman was retrenched/terminated by the management in preceding year i.e. on 7.8.2015 even he had rendered 240 days of service in the management. Thus, there is no specific pleading with respect to the working of 240 days in preceding year of the alleged termination. In the affidavit even there is no mention that the workman has worked for 240 days in the preceding year i.e. on 7.8.2015. Thus, this is a general assertion for rendering services with the management rather specific averments with respect to the 240 days in the preceding year before the termination. Thus, claim petition as well as affidavit filed by the workman is not very specific with respect to 240 days working in the establishment. In the light of the specific denial by the management for rendering services with the management, burden lies on the workman to prove this fact. The workman has failed to prove it. Thus, there is no necessity of issuing any show cause notice to the workman.

20. The claimant/workman has also claimed in his claim petition as well as in his affidavit and even in his cross-examination that Junior Engineer had given oral assurance for regularization in the department. In this regard, it is pertinent to mention here that he cannot have been regularized in the department as in those cases where the case fall

under the definition of industrial dispute as mentioned under Section 2(k) of the ID Act only then regularization can be made. Section 2(k) of the ID Act defines "industrial dispute", which reads as under:

"2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

x x x x

(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

And ID Act was amended adding Section 2A making individual dispute of a workman as an industrial dispute, if the dispute is related to dismissal, discharge, retrenchment or termination of individual workmen. Thus, Section 2A carves an exception to the definition of individual dispute as given in Section 2(k) of the ID Act. Thus, in order to give jurisdiction to the appropriate government to refer the dispute to the Tribunal/Labour Court, it was essential for the workman to show that his individual dispute for regularization was sponsored or espoused by the union of the workmen. The five Bench of the Apex Court in the case of ***Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), Civil Appeal No.532/1963, decided on 16.03.1965***, has also support the above view.

21. The Hon'ble Karnatana High Court in the case titled as ***Prakash and Ors. Vs. Superintending Engineer(Electrical), O and M Circle, Belgaum and Ors., Writ Petition Nos.41747-757/1999, decided on 31.03.2000***, has taken a view that the individual workman cannot raise a dispute with regard to absorption and regularization.

22. The Delhi High Court in the case of ***Management of Hotel Samrat and Ors. Vs. Government of NCT and Ors., Writ Petition(C) No.6247 & 6682/2002, decided on 04.01.2007***, has taken a similar view that in order to be an industrial dispute, it has to satisfy the definition of Section 2(k) of the ID Act.

23. In view of the above discussion, this Tribunal is of the firm view that there is no merit in the case and the same is liable to be dismissed.

24. Let copy of the award be sent to the Central Government for publication as required under Section 17(1) of the Act.

25. Date : 6.3.2024

KAMAL KANT, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2024

का.आ. 1888.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गैरीसन इंजीनियर (उपयोगिता), सैन्य इंजीनियरिंग सेवाएँ पंचकुला (एचआर) के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (22/2016) प्रकाशित करती है।

[फा. सं. एल -12025/01/2024- आई आर (बी-II)-215]

सलोनी, उप निदेशक

New Delhi, the 30th September, 2024

S.O. 1888.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 22/2016*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Garrison Engineer (Utility), Militray Engineering Service,Panchkula (HR) and their workmen.

[F. No. L-12025/01/2024- IR (B-II)-215]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Mr. Kamal Kant, Presiding Officer.

ID No.22/2016

Registered on:-16.06.2016

Sh. Gulshan Ali S/o Sh. Safdar Khan, R/o Village Dhera Guru, Post Office Chikan, Tehsil Kalka, District Panchkula (HR).

……..Workman

Versus

Garrison Engineer (Utility), Military Engineering Services, Chandimandir, District Panchkula (HR).

…….Respondent/Management

AWARD

Passed on:-06.03.2024

1. The workman Gulshan Ali has filed the present claim petition under Section 2-A of the Industrial Disputes Act, 1947(hereinafter called as 'Act') with the averment that he was interviewed and selected and recommended to be appointed as Mazdoor by a Selection Committee constituted by G.E. and was appointed as such in June 2005. After due Police Verification, he was allowed to join on 15.6.2005. His working hours were from 8 am to 5 pm daily with a break of one hour for lunch. It was usual practice in G.E.(U), Chandimandir that initially civilian employees are appointed on temporary basis, paid less that the prescribed rates, performance used to be observed and only then regularized on the job after having observed the performance of duties, work, conduct etc. for about one year. He was also assured at the time of his initial appointment/joining that he would be regularized as and when vacancies are sanctioned and notified in future on a regular scales of pay. He was being paid only Rs.50/- per day which was much less as prescribed under the Minimum Wages Act by the Government and whenever he made a demand for minimum wages/more pay he was threatened with termination of his employment and even threatened that he would not be regularized. His pay was increased from Rs.1500/- in 2002 to Rs.6000/- per month in 2015. He was discharging his duties sincerely and honestly. The management did not take any steps to regularize his service despite of the fact that the regular posts of Mazdoor, later on of Mates were existing and were vacant. The respondent/ management used the policy of hire and fire and as on date there are 10-15 Plumbers but still some vacancies are lying vacant. He made representations to the G.E.(U), Chandimandir through J.E. and A.G.E. concerned many times to enhance the wages and regularize his services as per the promise given at the time of his joining but every time rather than taking any action on the requests made he met with threat of termination of service. All his requests fell on the deaf ears. His services were terminated on 7.8.2015 without any notice of termination and without any compensation in lieu thereof. On 7.8.2015 he received one sentence verbal order that his services are terminated and he need not to come on duty w.e.f. 8.8.2015 by Sh. V.K. Sharma, A.G.E. a subordinate of G.E.(U), Chandimandir. He was also not given the salary for the month of August 2015. The respondent-management falls under the definition of Industry and he is the workman under the definition of Industrial Disputes Act. There was no compliance of Section 25-F of the Industrial Disputes Act neither any notice or any pay/wages in lieu thereof was given nor any retrenchment compensation was paid. The juniors were retained in service and he was terminated from service which is violation of Section 25-G of the ID Act. He demand Rs.2,58,320/- towards back wages along with interest @12% and reinstatement in service.

2. Respondent/management has filed its written statement, alleging therein that there are two types of employees i.e. Combatants and Civilians and not Civilian(Contractual). Daily wagers are employed through contractors and they are not the employees of the management. It is denied that workman was interviewed and selected and appointed as Mazdoor by Selection Committee. The workman was never employed by the management so the question of termination of services without any notice and any compensation does not arise. The management does not fall under the definition of Industry as the office of the management is under the control and administration of Ministry of Defence and the same being under the Central Government of India, the question of falling the management under the definition of Industry does not arise. The management has not violated the provisions of Section 25-F of the ID Act. Since the workman was never worked with the management, the question of payment of money in lieu of three months notice does not arise. Therefore, the present claim statement is liable to be dismissed being devoid of merits in the interest of justice.

3. The workman filed replication to the written statement filed by the management, alleging therein that he was employed and worked as Mazdoor for the management from 15.06.2005 to 8.8.2015 and was paid Rs.50/p per day from the day of joining which was revised from time to time and was being paid Rs.6000/- when his services were terminated in the month of August, 2015. He was not paid for the period from 1.8.2015 to 8.8.2015. No money in lieu of three months notice was paid to him.

4. It is pertinent to mention here that the management was proceeded ex parte on 16.11.2016 and the management has filed an application for setting aside the ex parte order dated 16.11.2016 to which reply was filed by the workman and the ex parte order dated 16.11.2016 passed against the management was set aside by my Ld. Predecessor on the payment of cost of Rs.300/- on 31.05.2017.

5. Parties were given opportunity to lead evidence.

6. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A and has been cross-examined by the learned counsel of management. The workman has also examined WW2 Sh. Mohd. Aslam, who filed his affidavit in evidence as Ex.WW2/A, WW3 Raman Kumar who filed his affidavit in evidence as

Ex.WW3/A, WW4 Sh. Mohd. Yamin who filed his affidavit in evidence as Ex.WW4/A and WW5 Sh. Anil Kumar who filed his affidavit in evidence as Ex.WW5/A and were cross-examined by the learned counsel of management.

7. The management has examined MW1 Sh. Ashish Yadav, working as AGE E/M-II in the office of Garrison Engineer(Utility) Chandimandir, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned AR of workman.

8. The workman filed written arguments, alleging therein that there are three types of employees i.e. Combatants, Civilian(Regular) and Civilian(Contractual) apart from daily wagers employed through contractors. There were about 250-260 civilian employees(regular as well as contractual) working under GE(U) Chandimandir. He was interviewed, selected and recommended to be appointed as Mazdoor by a Selection Committee constituted by G.E. and was appointed as such in June 2005 after due police verification and was allowed to join on 15.6.2005 from 8 am to 17 pm daily with a break of one hour for lunch. The workman was employed as Plumber/Pipe Fitter w.e.f. 1.1.2009. The workman was assured at the time of initial appointment/joining that he would be regularized as and when vacancies are sanctioned and notified in future on a regular scales of pay. The workman discharging his duties sincerely and honestly and his superiors never had any occasion to point out or having been found wanting. He had to work under strict military discipline in that when he used to enter/exit in/out of the Cantonment his Pass/I-card used to be checked and J.E. used to take daily attendance with time and date. Earlier Pass/I-Card used to made and issued by AGE and later on it was used to be issued by Station Headquarters, Chandimandir. Management was taking work for nine hours a day(including one hour break) from workman but was neither paying the minimum wages prescribed and notified from time to time by the Govt. nor any weekly holidays, any type of casual leave or earned leave was being given. The workman filed his affidavit in evidence and similarly four more witnesses were examined and cross-examined. All the witnesses have supported the version that there were three types of employees viz. Combatants, Civilian(Regular) and Civilian(Contractual) apart from daily wagers employed through Contractors and there were about 250-260 civilian employees working under GE(U) Chandimandir. Lone witness of the management is Assistant Garrison Engineer(AGE) who though posted on the incumbent post only December 2017 i.e. much after the period of workman's employment with management from 15.6.2005 to 7.8.2015 but claims to be in full knowledge of the case and hence competent to deposit. He denied of having any contractual employee like workman because management gives all maintenance works to Contractor and do not deal directly with contractual employees. The names of the contractors who were awarded such contract from 2005 to 2015 not given by the management and their date of contract/agreement, tenure of agreement, terms and conditions of agreement liability default or otherwise are not given. Assuming for the sake of argument that workman was employee of contractor as to how come same contractor continued from 15.06.2005 to 8.8.2015. It is a settled principle of law that if the facts are not specifically pleaded nor denied in pleadings are deem to be admitted facts and there is no question of its proof by oral or documentary evidence nor any such documentary of otherwise evidence is placed on record. The workman has placed on record complaint slips which are more than 130 in number for the period from 2007 to 2011, which belongs to the respondent/management having Docket Machine Numbers duly singed by the incumbent Junior Engineers(E/M) at the relevant time. By these signed slips, works/daily duties used to be assigned to the workman giving details of the nature of complaint, building number and location, individual tradesman detailed for the job and were required to be deposited back in the Service Centre on completion of job. These complaint slips conclusively prove that the workman was the employee of the management and the works/duties used to be allotted was supervised and monitored by JR(E/M) of the management. The workman has placed reliance to the judgment titled as ***Ram Singh and others Vs. Union Territory Chandigarh and others, Civil Appeal No.3166/2002, decided on 07.11.2003***, which deals with the relationship between employer and employee/master and servant and forum for deciding nature of employment of workman with establishment and contractors.

9. The management filed written arguments, alleging therein that there are two types of employees i.e. Combatants and Civilians and not Civilian(Contractual). The daily wagers are employed through contractors and thus, they are not the employees of the management. The workman was never appointed by the management and thus, no payment has ever been made to the defence accounts and the workman should be asked to prove the same with cogent evidence. The workman requested for experience certificate with a request that he can work with any other contract/contractor and accordingly the experience certificate was issued with specific work that on contractual basis that means they are working under contractors and they were paid by the different contractors. The MES was issuing temporary entry passes for workers of contractors as well as to the dependents of MES employees. Dut to security, this practice was stopped by Station HW and direction was issued that security passes shall be issued by Station HQ and police verification was also the requirement of Station HQ. CMP persons started checking all the persons including deployed by the contractors on installations. Therefore, to overcome the problem, all the persons were asked to given an application so that it can be forwarded to the respective police verification. The present claim petition filed by the workman is liable to be dismissed in the interest of justice.

10. I have heard learned counsels for the parties and have gone through the entire evidence placed on file by the parties as well as written arguments.

11. It is added here, it is the case of the workman that it was usual practice in respondent-management that initially civilian employees are employed on temporary basis and paid less than the prescribed rates and after

observing the performance, the workman are regularized on job after one year. The workman was paid Rs.50/- per day. Thus, the workman claims himself to be appointed on temporary daily wages. The first question is required to be determined is whether the claimant is a workman even if he was appointed on temporary daily wages and was drawing Rs.50/- per day. To my mind, the claimant is a workman within the definition of Section 2(S). In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

12. The real controversy lies between the parties with respect to the relationship of workman with management. The issue as to whether the workman was engaged by the employer/management directly or through contractors is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of their appointment or engagement for that period to show that he had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.***

13. Question remains to be seen whether claimant/workman Gulshan Ali has proved that he was directly engaged by the management on 15.6.2005 and served till his termination on 7.8.2015. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single reliable document to prove that workman/claimant was directly employed by the management. In this connection, workman Gulshan Ali has accepted that neither any appointment letter nor any termination letter was issued by the respondent-management. Undoubtedly, witness examined by the respondent-management namely Ashish Yadav, AGE E/M-II, Garrison Engineer(Utility) Chandimandir has categorically stated in his evidence that the claimant/workman was not employed by the management as such, neither notice nor retrenchment compensation was given by management.

14. The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer as follows:-

1) Whether the principal employer pays the salary instead of contractor and

2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been specifically stated in the claim petition of the workman. In fact, claim petition is totally silent regarding the payment of wages, salary, letter of appointment or anything likewise. Similarly, workman has not mentioned anything regarding the mode of payment of wages, salaries etc. in his affidavit. Thus, this basic features for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the workman.

15. WW1 Gulshan Ali has stated in his cross-examination that he does not have documentary proof to show that payment of wages were paid by management. He do not have any proof that any person was regularized. He was engaged through contractor. Thus, his stand that he was employed by the respondent-management stands falsified. Even from his cross-examination it can be inferred that he was getting wages in cash. Actually the workman was not employed by the management as it is his case that he was interviewed, selected and recommended as Mazdoor by a Selection Committee constituted by G.E. and joined as such on 15.6.2005. His police verification was also done. The said statement of him also seemed to be afterthought because had he been interviewed, selected and recommended to be appointed as Mazdoor. He could have summoned the documents from respondent-management by filing an application but he has not summoned the documents which clearly shows that he was not getting any wages from respondent-management nor he was appointed by the respondent-management.

16. Secondly, so far as the question of controls and supervision is concerned. Workman has categorically stated that his work was controlled and supervised by the officials of the management. To this effect, he has placed on record the temporary entry pass and complaint slips. Except this, nothing is brought on record to prove that it is management who were supervising and controlling the work of claimant/workman. The apex court while explaining the factor of supervision and control in the case of ***International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]*** has held as follows:-

"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

17. Thus, the principal enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the claimant/workman is mum on this score and workman has not mentioned any specific averment in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by the management. There is nothing on record to prove that it is the management who grant the leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the execution of the work as alleged by the witness may not be called effective and absolute control. Such control is being emphasized to control the work of the management for a specific work in efficient manner done by the management in the establishment. So far as the photocopies of complaint slips and entry pass placed on record by the workman are concerned, they have also not been proved by calling the concerned official from the respondent-management. Moreover, from these slips and entry pass, it cannot be said that workman was working under the control and supervision of the respondent-management. So far as case law of Ram Singh and others(supra) referred by the learned AR for the workman is concerned, it stated that control by employer is only one factor to determine relation between employers and employees along with many other interrelated factors.

18. Undoubtedly, in Tribunal cases, has to be decided on the basis of the preponderance of probability and not the proof beyond reasonable doubt. So far as this case is concerned, there is no documentary evidence on record to prove the factum of direct employment of workman with the management. In any way nothing is on record with respect of the payment of salary, attendance register or work done by the claimant/workman during the course of alleged employment with the management. There is nothing mentioned in the claim petition as well as affidavit of the workman that who was the person-concerned by which he was directly engaged in the respondent-management of Garrison Engineer, Chandimandir. I am of the considered opinion that mere saying that he was employed by the Selection Committee constituted by G.E. and was appointed as Mazdoor which is clearly not proved by the workman. Thus, it may be observed that there is nothing conclusive either oral or documentary to prove that it was principal-employer Garrison Engineer, Chandimandir who controls and supervise the work of the workman. Workman Gulshan Ali has examined four witnesses WW2 Mohd. Aslam, WW3 Raman Kumar, WW4 Mohd. Yamin and WW5 Anil Kumar, their testimonies are of similar nature as that of workman. They were engaged through contractor. No appointment letter was issued to them. They have no documentary proof to show that they were paid by the management. They do not have any termination letter issued by the management. They do not have any proof to show that the management has released the vacancy on regular basis. They are also daily wager like the workman and as such, their statements are also of no use to prove the case of workman.

19. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that management has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of management contended that workman in fact was not the employee of the establishment as such, neither he is terminated by the management nor such notice and compliance of Section 25-F of Act is required by the establishment. In this connection, learned counsel of management has placed reliance in case of ***Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal(Civil) No.1851 of 2002, decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 od 2004, decided on 13.09.2004*** as well as ***State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No.6306-6316 of 2003 decided on 14.03.2005.*** Learned counsel of workman contended that workman is rendering his services with management for so many years and he had completed 240 days in the year 7.8.2015 before termination by the management. As per pleading of the workman he was terminated from 7.8.2015 without compliance of Section 25-F of the ID Act. It is pertinent to mention that

pleadings required specific averments with respect to the facts alleged in it. It is not specifically pleaded that workman was retrenched/terminated by management in preceding year i.e. on 7.8.2015 even he had rendered 240 days of service in the management. Thus, there is no specific pleading with respect to the working of 240 days in preceding year of the alleged termination. In the affidavit even there is no mention that the workman has worked for 240 days in the preceding year i.e. on 7.8.2015. Thus, this is a general assertion for rendering services with the management rather specific averments with respect to the 240 days in the preceding year before the termination. Thus, claim petition as well as affidavit filed by the workman is not very specific with respect to 240 days working in the establishment. In the light of the specific denial by the management for rendering services with the management, burden lies on the workman to prove this fact. The workman has failed to prove it. Thus, there is no necessity of issuing any show cause notice to the workman.

20. The claimant/workman has also claimed in his claim petition as well as in his affidavit and even in his cross-examination that Junior Engineer had given oral assurance for regularization in the department. In this regard, it is pertinent to mention here that he cannot have been regularized in the department as in those cases where the case fall under the definition of industrial dispute as mentioned under Section 2(k) of the ID Act only then regularization can be made. Section 2(k) of the ID Act defines "industrial dispute", which reads as under:

"2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

x x x x

(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

And ID Act was amended adding Section 2A making individual dispute of a workman as an industrial dispute, if the dispute is related to dismissal, discharge, retrenchment or termination of individual workmen. Thus, Section 2A carves an exception to the definition of individual dispute as given in Section 2(k) of the ID Act. Thus, in order to give jurisdiction to the appropriate government to refer the dispute to the Tribunal/Labour Court, it was essential for the workman to show that his individual dispute for regularization was sponsored or espoused by the union of the workmen. The five Bench of the Apex Court in the case of ***Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), Civil Appeal No.532/1963, decided on 16.03.1965***, has support the above view.

21. The Hon'ble Karnatana High Court in the case titled as ***Prakash and Ors. Vs. Superintending Engineer(Electrical), O and M Circle, Belgaum and Ors., Writ Petition Nos.41747-757/1999, decided on 31.03.2000***, has taken a view that the individual workman cannot raise a dispute with regard to absorption and regularization.

22. The Delhi High Court in the case of ***Management of Hotel Samrat and Ors. Vs. Government of NCT and Ors., Writ Petition(C) No.6247 & 6682/2002, decided on 04.01.2007***, has taken a similar view that in order to be an industrial dispute, it has to satisfy the definition of Section 2(k) of the ID Act.

23. In view of the above discussion, this Tribunal is of the firm view that there is no merit in the case and the same is liable to be dismissed.

24. Let copy of the award be sent to the Central Government for publication as required under Section 17(1) of the Act.

KAMAL KANT, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2024

का.आ. 1889.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गैरीसन इंजीनियर (उपयोगिता), सैन्य इंजीनियरिंग सेवाएँ पंचकुला (एचआर) के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (23/2016) प्रकाशित करती है।

[फा. सं. एल-12025/01/2024- आई आर (बी-II)-216]

सलोनी, उप निदेशक

New Delhi, the 30th September, 2024

S.O. 1889.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.23/2016*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Garrison Engineer (Utility), Militray Engineering Service,Panchkula (HR) and their workmen.

[F. No. L-12025/01/2024- IR (B-II)-216]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Mr. Kamal Kant, Presiding Officer.

ID No.23/2016

Registered on:-16.06.2016

Sh. Mohd. Aslam S/o Sh. Sarwar Khan, R/o H.No.543, Village Rampursuri, Mahadev Colony, BCW Surajpur, Tehsil Kalka, District Panchkula(HR).

……..Workman

Versus

Garrison Engineer(Utility), Military Engineering Services, Chandimandir, District Panchkula(HR).

Respondent/Management

AWARD

Passed on:-06.03.2024

1. The workman Mohd. Aslam has filed the present claim petition under Section 2-A of the Industrial Disputes Act, 1947(hereinafter called as 'Act') with the averment that he was interviewed and selected and recommended to be appointed as Mazdoor by a Selection Committee constituted by G.E. and was appointed as such in April 2002. After due Police Verification, he was allowed to join on 7.5.2002. His working hours were from 8 am to 5 pm daily with a break of one hour for lunch. He was employed as Plumber w.e.f. 1.1.2009. It was usual practice in G.E.(U), Chandimandir that initially civilian employees are appointed on temporary basis, paid less that the prescribed rates, performance used to be observed and only then regularized on the job after having observed the performance of duties, work, conduct etc. for about one year. He was also assured at the time of his initial appointment/joining that he would be regularized as and when vacancies are sanctioned and notified in future on a regular scales of pay. He was being paid only Rs.50/- per day which was much less as prescribed under the Minimum Wages Act by the Government and whenever he made a demand for minimum wages/more pay he was threatened with termination of his employment and even threatened that he would not be regularized. His pay was increased from Rs.1500/- in the year 2002 to Rs.6000/- per month in 2015. He was discharging his duties sincerely and honestly. The management did not take any steps to regularize his services despite the fact that the regular posts of Mazdoor or Plumber, later on of Mates as well as Plumbers were existing and were vacant. The respondent/ management used the policy of hire and fire and as on date there are 10-15 Plumbers but still some vacancies are lying vacant. He made representations to the G.E.(U), Chandimandir through J.E. and A.G.E. concerned many times to enhance the wages and regularize his services as per the promise given at the time of his joining but every time rather than taking any action on the requests made he met with threat of termination of service. All his requests fell on the deaf ears. His services were terminated on 7.8.2015 without any notice of termination and without any compensation in lieu thereof. On 7.8.2015 he received one sentence verbal order that his services are terminated and he need not to come on duty w.e.f. 8.8.2015 by Sh. B.K. Sharma, A.G.E. a subordinate of G.E.(U), Chandimandir. He was also not given the salary for the month of August 2015. The respondent-management falls under the definition of Industry and he is the workman under the definition of Industrial Disputes Act. There was no compliance of Section 25-F of the Industrial Disputes Act neither any notice or any pay/wages in lieu thereof was given nor any retrenchment compensation was paid. The juniors were retained in service and he was terminated from service which is violation of Section 25-G of the ID Act. He demand Rs.2,77,520/- towards back wages along with interest @12% and reinstatement in service.

2. Respondent/management has filed its written statement, alleging therein that there are two types of employees i.e. Combatants and Civilians and not Civilian(Contractual). Daily wagers are employed through contractors and they are not the employees of the management. It is denied that workman was interviewed and selected and appointed as Mazdoor by Selection Committee. The workman was never employed by the management so the question of termination of services without any notice and any compensation does not arise. The management does not fall under the definition of Industry as the office of the management is under the control and administration of Ministry of Defence and the same being under the Central Government of India, the question of falling the

management under the definition of Industry does not arise. The management has not violated the provisions of Section 25-F of the ID Act. Since the workman was never worked with the management, the question of payment of money in lieu of three months notice does not arise. Therefore, the present claim statement is liable to be dismissed being devoid of merits in the interest of justice.

3. The workman filed replication to the written statement filed by the management, alleging therein that he was employed and worked as Mazdoor/Plumber for the management from 7.5.2002 to 8.8.2015 and was paid Rs.50/- per day from the day of joining which was revised from time to time and was being paid Rs.6000/- when his services were terminated in the month of August, 2015. He was not paid for the period from 1.8.2015 to 8.8.2015. No money in lieu of three months notice was paid to him.

4. It is pertinent to mention here that the management was proceeded ex parte on 16.11.2016 and the management has filed an application for setting aside the ex parte order dated 16.11.2016 to which reply was filed by the workman and the ex parte order dated 16.11.2016 passed against the management was set aside by my Ld. Predecessor on the payment of cost of Rs.300/- on 31.05.2017.

5. Parties were given opportunity to lead evidence.

6. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A along with documents i.e. Temporary Pass and work order slips(colly) and has been cross-examined by the learned counsel of management. The workman has also examined WW2 Raman Kumar, who filed his affidavit in evidence as Ex.WW2/A, WW3 Anil Kumar who filed his affidavit in evidence as Ex.WW3/A, WW4 Gulshan Ali who filed his affidavit in evidence as Ex.WW4/A and WW5 Mohd. Yamin @ Geja who filed his affidavit in evidence as Ex.WW5/A and were cross-examined by the learned counsel of management.

7. The management has examined MW1 Sh. Ashish Yadav, working as AGE E/M-II in the office of Garrison Engineer(Utility) Chandimandir, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned AR of workman.

8. The workman filed written arguments, alleging therein that there are three types of employees i.e. Combatants, Civilian(Regular) and Civilian(Contractual) apart from daily wagers employed through contractors. There were about 250-260 civilian employees(regular as well as contractual) working under GE(U) Chandimandir. He was interviewed, selected and recommended to be appointed as Mazdoor by a Selection Committee constituted by G.E. and was appointed as such in April 2002 after due police verification and was allowed to join on 7.5.2002 from 8 am to 17 pm daily with a break of one hour for lunch. The workman was employed as Plumber w.e.f. 1.1.2009. The workman was assured at the time of initial appointment/joining that he would be regularized as and when vacancies are sanctioned and notified in future on a regular scales of pay. The workman discharging his duties sincerely and honestly and his superiors never had any occasion to point out or having been found wanting. He had to work under strict military discipline in that when he used to enter/exit in/out of the Cantonment his Pass/I-card used to be checked and J.E. used to take daily attendance with time and date. Earlier Pass/I-Card used to made and issued by AGE and later on it was used to be issued by Station Headquarters, Chandimandir. Management was taking work for nine hours a day(including one hour break) from workman but was neither paying the minimum wages prescribed and notified from time to time by the Govt. nor any weekly holidays, any type of casual leave or earned leave was being given. The workman filed his affidavit in evidence and similarly four more witnesses were examined and cross-examined. All the witnesses have supported the version that there were three types of employees viz. Combatants, Civilian(Regular) and Civilian(Contractual) apart from daily wagers employed through Contractors and there were about 250-260 civilian employees working under GE(U) Chandimandir. Lone witness of the management is Assistant Garrison Engineer(AGE) who though posted on the incumbent post only December 2017 i.e. much after the period of workman's employment with management from 7.5.2002 to 7.8.2015 but claims to be in full knowledge of the case and hence competent to depose. He denied of having any contractual employee like workman because management gives all maintenance works to Contractor and do not deal directly with contractual employees. The names of the contractors who were awarded such contract from 2002 to 2015 not given by the management and their date of contract/agreement, tenure of agreement, terms and conditions of agreement liability default or otherwise are not given. Assuming for the sake of argument that workman was employee of contractor as to how come same contractor continued from 7.5.2002 to 8.8.2015. It is a settled principle of law that if the facts are not specifically pleaded nor denied in the pleadings are deem to be admitted facts and there is no question of its proof by oral or documentary evidence nor any such documentary or otherwise evidence is placed on the record. The workman has placed on record the complaint slips which are more than 130 in number for the period from 2007 to 2011, which belongs to the respondent-management having Docket Machine Numbers duly singed by the incumbent Junior Engineers(E/M) at the relevant time. By these signed slips, works/daily duties used to be assigned to the workman giving details of the nature of complaint, building number and location, individual tradesman detailed for the job and were required to be deposited back in the Service Centre on completion of job. These complaint slips conclusively prove that the workman was the employee of the management and the works/duties used to be allotted was supervised and monitored by JR(E/M) of the management. The workman has placed reliance to the judgment titled as ***Ram Singh and others Vs. Union Territory Chandigarh and others, Civil Appeal No.3166/2002, decided on 07.11.2003*** which

deals with the relationship between employer and employee/master and servant and forum for deciding nature of employment of workman with establishment and contractors.

9. The management filed written arguments, alleging therein that there are two types of employees i.e. Combatants and Civilians and not Civilian(Contractual). The daily wagers are employed through contractors and thus, they are not the employees of the management. The workman was never appointed by the management and thus, no payment has ever been made to the defence accounts and the workman should be asked to prove the same with cogent evidence. The workman requested for experience certificate with a request that he can work with any other contract/contractor and accordingly the experience certificate was issued with specific work that on contractual basis that means they are working under contractors and they were paid by the different contractors. The MES was issuing temporary entry passes for workers of contractors as well as to the dependents of MES employees. Dut to security, this practice was stopped by Station HW and direction was issued that security passes shall be issued by Station HQ and police verification was also the requirement of Station HQ. CMP persons started checking all the persons including deployed by the contractors on installations. Therefore, to overcome the problem, all the persons were asked to given an application so that it can be forwarded to the respective police verification. The present claim petition filed by the workman is liable to be dismissed in the interest of justice.

10. I have heard learned counsels for the parties and have gone through the entire evidence placed on file by the parties as well as written arguments.

11. It is added here, it is the case of the workman that it was usual practice in respondent-management that initially civilian employees are employed on temporary basis and paid less than the prescribed rates and after observing the performance, the workman are regularized on job after one year. The workman was paid Rs.50/- per day. Thus, the workman claims himself to be appointed on temporary daily wages. The first question is required to be determined is whether the claimant is a workman even if he was appointed on temporary daily wages and was drawing Rs.50/- per day. To my mind, the claimant is a workman within the definition of Section 2(S). In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

12. The real controversy lies between the parties with respect to the relationship of workman with management. The issue as to whether the workman was engaged by the employer/management directly or through contractors is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of their appointment or engagement for that period to show that he had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.***

13. Question remains to be seen whether claimant/workman Mohd. Aslam has proved that he was directly engaged by the management on 7.5.2002 and served till his termination on 7.8.2015. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single reliable document to prove that workman/claimant was directly employed by the management. In this connection, workman Mohd. Aslam has accepted that neither any appointment letter nor any termination letter was issued by the respondent-management. Undoubtedly, witness examined by the respondent-management namely Ashish Yadav, AGE E/M-II, Garrison Engineer(Utility) Chandimandir has categorically stated in his evidence that the claimant/workman was not employed by the management as such, neither notice nor retrenchment compensation was given by management.

14. The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer as follows:-

1) Whether the principal employer pays the salary instead of contractor and

2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been specifically stated in the claim petition of the workman. In fact, claim petition is totally silent regarding the payment of wages, salary, letter of appointment or anything likewise. Similarly, workman has not mentioned anything regarding the mode of payment of wages, salaries etc. in his affidavit. Thus, this basic features for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the workman.

15. WW1 Mohd. Aslam has stated in his cross-examination that he was paid salary by the JE of the Department in cash and signatures were obtained in a register. Salary slip was not issued to the workman. It appears that workman has taken the above plea just to cover up his case that he was employed by the respondent-management. Actually the workman was not employed by the respondent-management as it is his case that he was interviewed, selected and recommended as Mazdoor by a Selection Committee constituted by G.E. and joined as such on 7.5.2002. His police verification was also done. The said statement of him also seemed to be afterthought because had he been interviewed, selected and recommended to be appointed as Mazdoor. He could have summoned the documents from the respondent-management by filing an application but he has not summoned the documents which clearly shows that he was not getting any wages from the respondent-management nor he was appointed by the respondent-management.

16. Secondly, so far as the question of controls and supervision is concerned. Workman has categorically stated that his work was controlled and supervised by the officials of the management. To this effect, he has placed on record the temporary entry pass and complaint slips. Except this, nothing is brought on record to prove that it is management who were supervising and controlling the work of claimant/workman. The apex court while explaining the factor of supervision and control in the case of ***International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]*** has held as follows:-

"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

17. Thus, the principal enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the claimant/workman is mum on this score and workman has not mentioned any specific averment in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by the management. There is nothing on record to prove that it is the management who grant the leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the execution of the work as alleged by the witness may not be called effective and absolute control. Such control is being emphasized to control the work of the management for a specific work in efficient manner done by the management in the establishment. So far as the photocopies of complaint slips placed on record by the workman are concerned, they have also not been proved by calling the concerned official from the respondent-management. Moreover, from these slips and entry pass, it cannot be said that workman was working under the control and supervision of the respondent-management. So far as the case law ***Ram Singh and other(supra)*** referred by the learned AR for the workman is concerned, it stated that control by employer is only one factor to determine relation between employers and employees along with many other interrelated factors.

18. Undoubtedly, in Tribunal cases, has to be decided on the basis of the preponderance of probability and not the proof beyond reasonable doubt. So far as this case is concerned, there is no documentary evidence on record to prove the factum of direct employment of workman with the management. In any way nothing is on record with respect of the payment of salary, attendance register or work done by the claimant/workman during the course of alleged employment with the management. There is nothing mentioned in the claim petition as well as affidavit of the

workman that who was the person-concerned by which he was directly engaged in the respondent-management of Garrison Engineer, Chandimandir. I am of the considered opinion that mere saying that he was employed by the Selection Committee constituted by G.E. and was appointed as Mazdoor which is clearly not proved by the workman. Thus, it may be observed that there is nothing conclusive either oral or documentary to prove that it was principal-employer Garrison Engineer, Chandimandir who controls and supervise the work of the workman. Workman Mohd. Aslam has examined four witnesses WW2 Raman Kumar, WW3 Anil Kumar, WW4 Gulshan Ali and WW5 Mohd. Yamin, their testimonies are of similar nature as that of workman. They all had also stated that salary was paid to them also by the J.E. of the department in cash. They had also admitted that there was no advertisement at the time of their joining. They had not submitted any form or application for the job. There was no call letter for joining the service. They are also daily wager like the workman and as such, their statements are also of no use to prove the case of workman.

19. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that management has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of the management contended that workman in fact was not the employee of the establishment as such, neither he is terminated by the management nor such notice and compliance of Section 25-F of the Act is required by the establishment. In this connection, learned counsel of the management has placed reliance in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal(Civil) No.1851 of 2002, decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 od 2004, decided on 13.09.2004*** as well as ***State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No.6306-6316 of 2003 decided on 14.03.2005.*** Learned counsel of the workman contended that workman is rendering his services with the management for so many years and he had completed 240 days in the year 7.8.2015 before termination by the management. As per pleading of the workman he was terminated from 7.8.2015 without compliance of Section 25-F of the ID Act. It is pertinent to mention that pleadings required specific averments with respect to the facts alleged in it. It is not specifically pleaded that workman was retrenched/terminated by the management in preceding year i.e. on 7.8.2015 even he had rendered 240 days of service in the management. Thus, there is no specific pleading with respect to the working of 240 days in preceding year of the alleged termination. In the affidavit even there is no mention that the workman has worked for 240 days in the preceding year i.e. on 7.8.2015. Thus, this is a general assertion for rendering services with the management rather specific averments with respect to the 240 days in the preceding year before the termination. Thus, claim petition as well as affidavit filed by the workman is not very specific with respect to 240 days working in the establishment. In the light of the specific denial by the management for rendering services with the management, burden lies on the workman to prove this fact. The workman has failed to prove it. Thus, there is no necessity of issuing any show cause notice to the workman.

20. The claimant/workman has also claimed in his claim petition as well as in his affidavit and even in his cross-examination that Junior Engineer had given oral assurance for regularization in the department. In this regard, it is pertinent to mention here that he cannot have been regularized in the department as in those cases where the case fall under the definition of industrial dispute as mentioned under Section 2(k) of the ID Act only then regularization can be made. Section 2(k) of the ID Act defines "industrial dispute", which reads as under:

"2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

x x x x

(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

And ID Act was amended adding Section 2A making individual dispute of a workman as an industrial dispute, if the dispute is related to dismissal, discharge, retrenchment or termination of individual workmen. Thus, Section 2A carves an exception to the definition of individual dispute as given in Section 2(k) of the ID Act. Thus, in order to give jurisdiction to the appropriate government to refer the dispute to the Tribunal/Labour Court, it was essential for the workman to show that his individual dispute for regularization was sponsored or espoused by the union of the workmen. The five Bench of the Apex Court in the case of ***Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), Civil Appeal No.532/1963, decided on 16.03.1965***, has also support the above view.

21. The Hon'ble Karnatana High Court in the case titled as ***Prakash and Ors. Vs. Superintending Engineer(Electrical), O and M Circle, Belgaum and Ors., Writ Petition Nos.41747-757/1999, decided on 31.03.2000***, has taken a view that the individual workman cannot raise a dispute with regard to absorption and regularization.

22. The Delhi High Court in the case of ***Management of Hotel Samrat and Ors. Vs. Government of NCT and Ors., Writ Petition(C) No.6247 & 6682/2002, decided on 04.01.2007***, has taken a similar view that in order to be an industrial dispute, it has to satisfy the definition of Section 2(k) of the ID Act.

23. In view of the above discussion, this Tribunal is of the firm view that there is no merit in the case and the same is liable to be dismissed.

24. Let copy of the award be sent to the Central Government for publication as required under Section 17(1) of the Act.

KAMAL KANT, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2024

का.आ. 1890.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गैरीसन इंजीनियर (उपयोगिता), सैन्य इंजीनियरिंग सेवाएँ पंचकुला (एचआर) के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (24/2016) प्रकाशित करती है।

[फा. सं. एल-12025/01/2024- आई आर (बी-II)-217]

सलोनी, उप निदेशक

New Delhi, the 30th September, 2024

S.O. 1890.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.24/2016*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Garrison Engineer (Utility), Militray Engineering Service,Panchkula (HR) and their workmen.

[F. No. L-12025/01/2024- IR (B-II)-217]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Mr. Kamal Kant, Presiding Officer.

ID No.24/2016

Registered on:-16.06.2016

Sh. Mohd. Yamin Geja S/o Sh. Sarwar Khan, R/o H.No.543, Village Rampursuri, Mahadev Colony, BCW Surajpur, Tehsil Kalka, District Panchkula(HR).

……..Workman

Versus

Garrison Engineer(Utility), Military Engineering Services, Chandimandir, District Panchkula(HR).

.Respondent/Management

Award

Passed on:-06.03.2024

1. The workman Mohd. Yamin @Geja has filed the present claim petition under Section 2-A of the Industrial Disputes Act, 1947(hereinafter called as 'Act') with the averment that he was interviewed and selected and recommended to be appointed as Mazdoor by a Selection Committee constituted by G.E. and was appointed as such in May 2000. After due Police Verification, he was allowed to join on 1.5.2000. His working hours were from 8 am to 5 pm daily with a break of one hour for lunch. It was usual practice in G.E.(U), Chandimandir that initially civilian employees are appointed on temporary basis, paid less that the prescribed rates, performance used to be observed and only then regularized on the job after having observed the performance of duties, work, conduct etc. for about one year. He was also assured at the time of his initial appointment/joining that he would be regularized as and when vacancies are sanctioned and notified in future on a regular scales of pay. He was being paid only Rs.50/- per day which was much less as prescribed under the Minimum Wages Act by the Government and whenever he made a demand for minimum wages/more pay he was threatened with termination of his employment and even threatened

that he would not be regularized. His pay was increased from Rs.1500/- in 2000 to Rs.6000/- per month in 2015. He was discharging his duties sincerely and honestly. The management did not take any steps to regularize his service despite of the fact that the regular posts of Mazdoor, later on of Mates as well as Plumbers were existing and were vacant. The respondent/ management used the policy of hire and fire and as on date there are 90-95 Mates but still some vacancies are lying vacant. He made representations to the G.E.(U), Chandimandir through J.E. and A.G.E. concerned many times to enhance the wages and regularize his services as per the promise given at the time of his joining but every time rather than taking any action on the requests made he met with threat of termination of service. All his requests fell on the deaf ears. His services were terminated on 7.8.2015 without any notice of termination and without any compensation in lieu thereof. On 7.8.2015 he received one sentence verbal order that his services are terminated and he need not to come on duty w.e.f. 8.8.2015 by Sh. V.K. Sharma, A.G.E. a subordinate of G.E.(U), Chandimandir. He was also not given the salary for the month of August 2015. The respondent-management falls under the definition of Industry and he is the workman under the definition of Industrial Disputes Act. There was no compliance of Section 25-F of the Industrial Disputes Act neither any notice or any pay/wages in lieu thereof was given nor any retrenchment compensation was paid. The juniors were retained in service and he was terminated from service which is violation of Section 25-G of the ID Act. He demand Rs.3,00,155/- towards back wages along with interest @12% and reinstatement in service.

2. Respondent/management has filed its written statement, alleging therein that there are two types of employees i.e. Combatants and Civilians and not Civilian(Contractual). Daily wagers are employed through contractors and they are not the employees of the management. It is denied that workman was interviewed and selected and appointed as Mazdoor by Selection Committee. The workman was never employed by the management so the question of termination of services without any notice and any compensation does not arise. The management does not fall under the definition of Industry as the office of the management is under the control and administration of Ministry of Defence and the same being under the Central Government of India, the question of falling the management under the definition of Industry does not arise. The management has not violated the provisions of Section 25-F of the ID Act. Since the workman was never worked with the management, the question of payment of money in lieu of three months notice does not arise. Therefore, the present claim statement is liable to be dismissed being devoid of merits in the interest of justice.

3. The workman filed replication, reiterating the same facts as alleged in the claim statement hence need not to be repeated again.

4. It is pertinent to mention here that the management was proceeded ex parte on 16.11.2016 and the management has filed an application for setting aside the ex parte order dated 16.11.2016 to which reply was filed by the workman and the ex parte order dated 16.11.2016 passed against the management was set aside by my Ld. Predecessor on the payment of cost of Rs.300/- on 31.05.2017.

5. Parties were given opportunity to lead evidence.

6. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A along with documents i.e. Temporary Pass and work order slip(colly) and has been cross-examined by the learned counsel of management. The workman has also examined WW2 Sh. Anil Kumar, who filed his affidavit in evidence as Ex.WW2/A, WW3 Raman Kumar who filed his affidavit in evidence as Ex.WW3/A, WW4 Gulshan Ali who filed his affidavit in evidence as Ex.WW4/A and WW5 Mohd. Aslam who filed his affidavit in evidence as Ex.WW5/A and were cross-examined by the learned counsel of management.

7. The management has examined MW1 Sh. Ashish Yadav, working as AGE E/M-II in the office of Garrison Engineer(Utility) Chandimandir, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned AR of workman.

8. The workman filed written arguments, alleging therein that there are three types of employees i.e. Combatants, Civilian(Regular) and Civilian(Contractual) apart from daily wagers employed through contractors. There were about 250-260 civilian employees(regular as well as contractual) working under GE(U) Chandimandir. He was interviewed, selected and recommended to be appointed as Mazdoor by a Selection Committee constituted by G.E. and was appointed as such in 2000 after due police verification and was allowed to join on 1.5.2000 from 8 am to 17 pm daily with a break of one hour for lunch. The workman was employed as Plumber w.e.f. 1.1.2009. The workman was assured at the time of initial appointment/joining that he would be regularized as and when vacancies are sanctioned and notified in future on a regular scales of pay. The workman discharging his duties sincerely and honestly and his superiors never had any occasion to point out or having been found wanting. He had to work under strict military discipline in that when he used to enter/exit in/out of the Cantonment his Pass/I-card used to be checked and J.E. used to take daily attendance with time and date. Earlier Pass/I-Card used to made and issued by AGE and later on it was used to be issued by Station Headquarters, Chandimandir. Management was taking work for nine hours a day(including one hour break) from workman but was neither paying the minimum wages prescribed and notified from time to time by the Govt. nor any weekly holidays, any type of casual leave or earned leave was being given. The workman filed his affidavit in evidence and similarly four more witnesses were examined and cross-examined. All the witnesses have supported the version that there were three types of employees viz. Combatants,

Civilian(Regular) and Civilian(Contractual) apart from daily wagers employed through Contractors and there were about 250-260 civilian employees working under GE(U) Chandimandir. Lone witness of the management is Assistant Garrison Engineer(AGE) who though posted on the incumbent post only December 2017 i.e. much after the period of workman's employment with management from 1.5.2000 to 7.8.2015 but claims to be in full knowledge of the case and hence competent to deposit. He denied of having any contractual employee like workman because management gives all maintenance works to Contractor and do not deal directly with contractual employees. The names of the contractors who were awarded such contract from 2002 to 2015 not given by the management and their date of contract/agreement, tenure of agreement, terms and conditions of agreement liability default or otherwise are not given. Assuming for the sake of argument that workman was employee of contractor as to how come same contractor continued from more than thirteen years from 7.5.2002 to 8.8.2015. It is a settled principle of law that if the facts are not specifically pleaded nor denied in pleadings are deem to be admitted facts and there is no question of its proof by oral or documentary evidence nor any such documentary of otherwise evidence is placed on record. The workman has placed on record complaint slips which are more than 130 in number for the period from 2007 to 2011, which belongs to management having Docket Machine Numbers duly singed by the incumbent Junior Engineers(E/M) at the relevant time. By these signed slips, works/daily duties used to be assigned to the workman giving details of the nature of complaint, building number and location, individual tradesman detailed for the job and were required to be deposited back in the Service Centre on completion of job. These complaint slips conclusively prove that the workman was the employee of the management and the works/duties used to be allotted was supervised and monitored by JR(E/M) of the management. The workman has placed reliance to the judgment titled as ***Ram Singh and others Vs. Union Territory Chandigarh and others, Civil Appeal No.3166/2002,*** which deals with the relationship between employer and employee/master and servant and forum for deciding nature of employment of workman with establishment and contractors.

9. The management filed written arguments, alleging therein that there are two types of employees i.e. Combatants and Civilians and not Civilian(Contractual). The daily wagers are employed through contractors and thus, they are not the employees of the management. The workman was never appointed by the management and thus, no payment has ever been made to the defence accounts and the workman should be asked to prove the same with cogent evidence. The workman requested for experience certificate with a request that he can work with any other contract/contractor and accordingly the experience certificate was issued with specific work that on contractual basis that means they are working under contractors and they were paid by the different contractors. The MES was issuing temporary entry passes for workers of contractors as well as to the dependents of MES employees. Dut to security, this practice was stopped by Station HW and direction was issued that security passes shall be issued by Station HQ and police verification was also the requirement of Station HQ. CMP persons started checking all the persons including deployed by the contractors on installations. Therefore, to overcome the problem, all the persons were asked to give an application so that it can be forwarded to the respective police verification. The present claim petition filed by the workman is liable to be dismissed in the interest of justice.

10. I have heard learned counsels for the parties and have gone through the entire evidence placed on file by the parties as well as written arguments.

11. It is added here, it is the case of the workman that it was usual practice in respondent-management that initially civilian employees are employed on temporary basis and paid less than the prescribed rates and after observing the performance, the workman are regularized on job after one year. He workman was paid Rs.50/- per day. Thus, the workman claims himself to be appointed on temporary daily wages. The first question is required to be determined is whether the claimant is a workman even if he was appointed on temporary daily wages and was drawing Rs.50/- per day. To my mind, the claimant is a workman within the definition of Section 2(S). In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

12. The real controversy lies between the parties with respect to the relationship of workman with management. The issue as to whether the workman was engaged by the employer/management directly or through contractors is the

bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of their appointment or engagement for that period to show that he had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.***

13. Question remains to be seen whether claimant/workman Mohd. Yamin @Geja has proved that he was directly engaged by the management on 1.5.2000 and served till his termination on 7.8.2015. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single reliable document to prove that workman/claimant was directly employed by the management. In this connection, workman Mohd. Yamin @Geja has accepted that neither any appointment letter nor any termination letter was issued by the respondent-management. Undoubtedly, witness examined by the respondent-management namely Ashish Yadav, AGE E/M-II, Garrison Engineer(Utility) Chandimandir has categorically stated in his evidence that the claimant/workman was not employed by the management as such, neither notice nor retrenchment compensation was given by management.

14. The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer as follows:-

1) Whether the principal employer pays the salary instead of contractor and

2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been specifically stated in the claim petition of the workman. In fact, claim petition is totally silent regarding the payment of wages, salary, letter of appointment or anything likewise. Similarly, workman has not mentioned anything regarding the mode of payment of wages, salaries etc. in his affidavit. Thus, this basic features for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the workman.

15. WW1 Mohd. Yamin @Geja has stated in his cross-examination that he was paid salary by the JE of the Department in cash and signatures were obtained in a register. Salary slip was not issued to the workman. It appears that workman has taken the above plea just to cover up his case that he was employed by the respondent-management. Actually the workman was not employed by the respondent-management as it is his case that he was interviewed, selected and recommended as Mazdoor by a Selection Committee constituted by G.E. and joined as such on 1.5.2000. His police verification was also done. The said statement of him also seemed to be afterthought because had he been interviewed, selected and recommended to be appointed as Mazdoor. He could have summoned the documents from the respondent-management by filing an application but he has not summoned the documents which clearly shows that he was not getting any wages from the respondent-management nor he was appointed by the respondent-management.

16. Secondly, so far as the question of controls and supervision is concerned. Workman has categorically stated that his work was controlled and supervised by the officials of the management. To this effect, he has placed on record the temporary entry pass and complaint slips. Except this, nothing is brought on record to prove that it is management who were supervising and controlling the work of claimant/workman. The apex court while explaining the factor of supervision and control in the case of ***International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]*** has held as follows:-

"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

17. Thus, the principal enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and

continuity of service etc. Claim petition filed by the claimant/workman is mum on this score and workman has not mentioned any specific averment in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by the management. There is nothing on record to prove that it is the management who grant the leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the execution of the work as alleged by the witness may not be called effective and absolute control. Such control is being emphasized to control the work of the management for a specific work in efficient manner done by the management in the establishment. So far as the photocopies of complaint slips and entry pass placed on record by the workman are concerned, they have also not been proved by calling the concerned official from the respondent-management. Moreover, from these slips and entry pass, it cannot be said that workman was working under the control and supervision of the respondent-management. So far as case law of ***Ram Singh and other(supra)*** referred by the learned AR for the workman is concerned, it stated that control by employers is only one factor to determine relation between employers and employees along with many other interrelated factors.

18. Undoubtedly, in Tribunal cases, has to be decided on the basis of the preponderance of probability and not the proof beyond reasonable doubt. So far as this case is concerned, there is no documentary evidence on record to prove the factum of direct employment of workman with the management. In any way nothing is on record with respect of the payment of salary, attendance register or work done by the claimant/workman during the course of alleged employment with the management. There is nothing mentioned in the claim petition as well as affidavit of the workman that who was the person-concerned by which he was directly engaged in the respondent-management of Garrison Engineer, Chandimandir. I am of the considered opinion that mere saying that he was employed by the Selection Committee constituted by G.E. and was appointed as Mazdoor which is clearly not proved by the workman. Thus, it may be observed that there is nothing conclusive either oral or documentary to prove that it was principal-employer Garrison Engineer, Chandimandir who controls and supervise the work of the workman. Workman Mohd. Yamin @Geja has examined four witnesses WW2 Anil Kumar, WW3 Raman Kumar, WW4 Gulshan Ali and WW5 Mohd. Aslam, their testimonies are of similar nature as that of workman. They all had also stated that salary was paid to them also by the J.E. of the department in cash. They had also admitted that there was no advertisement at the time of their joining. They had not submitted any form or application for the job. There was no call letter for joining the service. They are also daily wager like the workman and as such, their statements are also of no use to prove the case of workman.

19. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that management has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of the management contended that workman in fact was not the employee of the establishment as such, neither he is terminated by the management nor such notice and compliance of Section 25-F of the Act is required by the establishment. In this connection, learned counsel of the management has placed reliance in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal(Civil) No.1851 of 2002, decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 od 2004, decided on 13.09.2004*** as well as ***State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No.6306-6316 of 2003 decided on 14.03.2005.*** Learned counsel of the workman contended that workman is rendering his services with the management for so many years and he had completed 240 days in the year 7.8.2015 before termination by the management. As per pleading of the workman he was terminated from 7.8.2015 without compliance of Section 25-F of the ID Act. It is pertinent to mention that pleadings required specific averments with respect to the facts alleged in it. It is not specifically pleaded that workman was retrenched/terminated by the management in preceding year i.e. on 7.8.2015 even he had rendered 240 days of service in the management. Thus, there is no specific pleading with respect to the working of 240 days in preceding year of the alleged termination. In the affidavit even there is no mention that the workman has worked for 240 days in the preceding year i.e. on 7.8.2015. Thus, this is a general assertion for rendering services with the management rather specific averments with respect to the 240 days in the preceding year before the termination. Thus, claim petition as well as affidavit filed by the workman is not very specific with respect to 240 days working in the establishment. In the light of the specific denial by the management for rendering services with the management, burden lies on the workman to prove this fact. The workman has failed to prove it. Thus, there is no necessity of issuing any show cause notice to the workman.

20. The claimant/workman has also claimed in his claim petition as well as in his affidavit and even in his cross-examination that Junior Engineer had given oral assurance for regularization in the department. In this regard, it is pertinent to mention here that he cannot have been regularized in the department as in those cases where the case fall under the definition of industrial dispute as mentioned under Section 2(k) of the ID Act only then regularization can be made. Section 2(k) of the ID Act defines "industrial dispute", which reads as under:

"2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

x x x x

(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

And ID Act was amended adding Section 2A making individual dispute of a workman as an industrial dispute, if the dispute is related to dismissal, discharge, retrenchment or termination of individual workmen. Thus, Section 2A carves an exception to the definition of individual dispute as given in Section 2(k) of the ID Act. Thus, in order to give jurisdiction to the appropriate government to refer the dispute to the Tribunal/Labour Court, it was essential for the workman to show that his individual dispute for regularization was sponsored or espoused by the union of the workmen. The five Bench of the Apex Court in the case of ***Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), Civil Appeal No.532/1963, decided on 16.03.1965***, has also support the above view.

21. The Hon'ble Karnatana High Court in the case titled as ***Prakash and Ors. Vs. Superintending Engineer(Electrical), O and M Circle, Belgaum and Ors., Writ Petition Nos.41747-757/1999, decided on 31.03.2000***, has taken a view that the individual workman cannot raise a dispute with regard to absorption and regularization.

22. The Delhi High Court in the case of ***Management of Hotel Samrat and Ors. Vs. Government of NCT and Ors., Writ Petition(C) No.6247 & 6682/2002, decided on 04.01.2007***, has taken a similar view that in order to be an industrial dispute, it has to satisfy the definition of Section 2(k) of the ID Act.

23. In view of the above discussion, this Tribunal is of the firm view that there is no merit in the case and the same is liable to be dismissed.

24. Let copy of the award be sent to the Central Government for publication as required under Section 17(1) of the Act.

Date : 6.3.2024

KAMAL KANT, Presiding Officer

नई दिल्ली, 1 अक्तूबर, 2024

का.आ. 1891.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **सन सिक्यूरिटी सर्विसेज, सर्वे नं.67 परमार नगर, पुणे; महाप्रबंधक, बीएसएनएल, अहमदनगर; उपविभागीय अभियंता, बीएसएनएल, कोपरगांव, अहमदनगर,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री भाऊसाहेब रामचंद्र खरात, कामगार,** के बीच अनुबंध में निर्दिष्ट **श्रम न्यायालय-2, अहमदनगर,पंचाट(संदर्भ संख्या 24/2019)** को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 01.10.2024को प्राप्त हुआ था।

[फा. सं. एल-40012/3/2019- आई आर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 1st October, 2024

S.O. 1891.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 24/2019) of **The Labour Court-2,Ahmednagar.** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Sun security Services, Survey No.67 Parmar nagar, Pune; The General Manager, BSNL, Ahmednagar; The Sub division Engineer, BSNL, Kopargaon, Ahmednagar, and Shri Bhausaheb Ramchandra Kharat, Worker,** which was received along with soft copy of the award by the Central Government on 01.10.2024.

[F. No. L-40012/3/2019- IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE SECOND LABOUR COURT, AT AHMEDNAGAR.

(BEFORE ABHIJEET G. DESHMUKH, PRESIDING OFFICER)

Reference (I.D.A.) No. 24/2019.

(CNR–MHLC-160000802019)

1. M/s. Sun Security Services,
Survey No. 67, 1st Floor,

Parmar Nagar No. 3,

Pune – 411013.

2. The General Manager,

Bharat Sanchar Nigam Ltd.,

DTO Compound, Near GPO,

Ahmednagar – 414002.

3. Sub Divl. Engineer,

Bharat Sanchar Nigam Ltd.,

Kopragaon Distt,

Ahmednagar – 414002. … **First Party.**

VERSUS

Sh. Bhausaheb Ramchandra Kharat,

C/o. Nasik Pune Road, Mahatma

Gandhi Nagar, Tal – Sangamner,

Distt – Ahmednagar – 414002. … **Second Party.**

APPEARANCE :- Shri. A.V. Patil, Ld. Adv. for First Party.

Shri. K.Y. Modgekar, Ld. Adv. For Second Party.

A W A R D

(Delivered on 31/07/2024)

1. The Section Officer, Government of India, Ministry of Labour, New Delhi has sent this reference under clause (d) of sub-section (1) and sub-section 2-A of Section 10 of the Industrial Disputes Act, 1947, for adjudication of the dispute between the above parties.

2. Perusal of record and proceedings discloses that this Court has issued notices to both the parties vide Exh. O-2 and Exh. O-4. The first party No. 1 failed to appear before the Court. Hence, matter is proceeded ex-parte against first party No. 1 vide order on Exh. U-1 dated 22.01.2020. The second party and first party Nos. 2 and 3 appeared through their respective Advocates, and filed their respective statement of claim and written statement. The second party has also filed interim relief application Exh. U-2. The first party Nos. 2 and 3 have filed their detailed say at Exh. C-7 to the interim relief application of the second party. Thereafter, the second party has filed notice of documents Exh. U-7 on 12.02.2020. The said application was decided on 01.02.2021. Thereafter, the matter was posted from time to time till 10.07.2024, for argument on interim relief application and compliance of order passed on Exh. U-7.

3. Perused record and proceedings. Perusal of Roznama discloses that the second party has not taken any steps to proceed further with the case since last more than 3 years. This lethargic behavior of the second party clearly shows that the second party lost his interest in proceeding with the present Reference. Hence, on 10.07.2024, the matter is posted for passing Award. Thereafter, also the second party remained continuously absent and failed to take steps.

4. Today, the second party is called out repeatedly, but he failed to appear before the Court and to take steps. Having regard to these facts and circumstances of the case, this Court is of the considered view that the second party failed to appear before this Court even after giving more than sufficient opportunities and he lost his interest in proceeding with the present Reference. Hence, the present matter deserves to be disposed of by answering the Reference in negative. Hence, the following award is passed.

AWARD

1. The reference is answered in negative.
2. Six copies of this Award be sent to Section Officer, Government of India, Ministry of Labour, New Delhi for publication and further necessary action.
3. No order as to costs

Date : 31.7.2024

ABHIJEET G. DESHMUKH, Presiding Officer

नई दिल्ली, 1 अक्तूबर, 2024

का.आ. 1892.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **सन सिक्यूरिटी सर्विसेज, सर्वे नं.67 परमार नगर, पुणे; महाप्रबंधक, बीएसएनएल, अहमदनगर; उपविभागीय अभियंता, बीएसएनएल, कोपरगांव, अहमदनगर,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री दिलीप रंगनाथ जगताप, कामगार,** के बीच अनुबंध में निर्दिष्ट **श्रम न्यायालय-2, अहमदनगर,पंचाट(संदर्भ संख्या 26/2019)** को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 01.10.2024को प्राप्त हुआ था।

[फा. सं. एल-40012/5/2019- आई आर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 1st October, 2024

S.O. 1892.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 26/2019) of **The Labour Court-2,Ahmednagar.** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Sun security Services, Survey No.67 Parmar nagar, Pune; The General Manager, BSNL, Ahmednagar; The Sub division Engineer, BSNL, Kopargaon, Ahmednagar, and Shri Dilip Ranganath Jagtap, Worker,** which was received along with soft copy of the award by the Central Government on 01.10.2024.

[F. No. L-40012/5/2019- IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE SECOND LABOUR COURT, AT AHMEDNAGAR.

(BEFORE ABHIJEET G. DESHMUKH, PRESIDING OFFICER)

Reference (I.D.A.) No. 26/2019.

(CNR–MHLC-160000822019)

1. M/s. Sun Security Services,
   Survey No. 67, 1st Floor,
   Parmar Nagar No. 3,
   Pune – 411013.
2. The General Manager,
   Bharat Sanchar Nigam Ltd.,
   DTO Compound, Near GPO,
   Ahmednagar – 414002.
3. Sub Divl. Engineer,
   Bharat Sanchar Nigam Ltd.,
   Kopragaon Distt,
   Ahmednagar – 414002. … **First Party.**

VERSUS

Sh. Dilip Ranganath Jagtap,
C/o. Telegaon Dighe,
Tal – Sangamner,
Ahmednagar – 414002. … **Second Party.**

APPEARANCE :- Shri. A.V. Patil, Ld. Adv. for First Party.
Shri. K.Y. Modgekar, Ld. Adv. For Second Party.

A W A R D

(Delivered on 31/07/2024)

1. The Section Officer, Government of India, Ministry of Labour, New Delhi has sent this reference under clause (d) of sub-section (1) and sub-section 2-A of Section 10 of the Industrial Disputes Act, 1947, for adjudication of the dispute between the above parties.

2. Perusal of record and proceedings discloses that this Court has issued notices to both the parties vide Exh. O-2 and Exh. O-4. The first party No. 1 failed to appear before the Court. Hence, matter is proceeded ex-parte against first party No. 1 vide order on Exh. U-1 dated 22.01.2020. The second party and first party Nos. 2 and 3 appeared through their respective Advocates, and filed their respective statement of claim and written statement. The second party has also filed interim relief application Exh. U-2. The first party Nos. 2 and 3 have filed their detailed say at Exh. C-7 to the interim relief application of the second party. Thereafter, the second party has filed notice of documents Exh. U-7 on 12.02.2020. The said application was decided on 01.02.2021. Thereafter, the matter was posted from time to time till 10.07.2024, for argument on interim relief application and compliance of order passed on Exh. U-7.

3. Perused record and proceedings. Perusal of Roznama discloses that the second party has not taken any steps to proceed further with the case since last more than 3 years. This lethargic behavior of the second party clearly shows that the second party lost his interest in proceeding with the present Reference. Hence, on 10.07.2024, the matter is posted for passing Award. Thereafter, also the second party remained continuously absent and failed to take steps.

4. Today, the second party is called out repeatedly, but he failed to appear before the Court and to take steps. Having regard to these facts and circumstances of the case, this Court is of the considered view that the second party failed to appear before this Court even after giving more than sufficient opportunities and he lost his interest in proceeding with the present Reference. Hence, the present matter deserves to be disposed of by answering the Reference in negative. Hence, the following award is passed.

AWARD

1. The reference is answered in negative.
2. Six copies of this Award be sent to Section Officer, Government of India, Ministry of Labour, New Delhi for publication and further necessary action.
3. No order as to costs.

Date : 31.7.2024

ABHIJEET G. DESHMUKH, Presiding Officer

नई दिल्ली, 1 अक्तूबर, 2024

का.आ. 1893.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **सन सिक्यूरिटी सर्विसेज, सर्वे नं.67 परमार नगर, पुणे; महाप्रबंधक, बीएसएनएल, अहमदनगर; उपविभागीय अभियंता, बीएसएनएल, कोपरगांव, अहमदनगर,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री नरोड़े भास्कर केशवराव,कामगार,** के बीच अनुबंध में निर्दिष्ट **श्रम न्यायालय-2, अहमदनगर,पंचाट(संदर्भ संख्या 28/2019)** को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 01.10.2024को प्राप्त हुआ था।

[फा. सं. एल-40012/19/2019- आई आर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 1st October, 2024

S.O. 1893.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 28/2019) of **The Labour Court-2,Ahmednagar.** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Sun security Services, Survey No.67 Parmar nagar, Pune; The General Manager, BSNL, Ahmednagar; The Sub division Engineer, BSNL, Kopargaon, Ahmednagar, and Shri Narode Bhaskar Keshvrao, Worker,** which was received along with soft copy of the award by the Central Government on 01.10.2024.

[F. No. L-40012/19/2019- IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE SECOND LABOUR COURT, AT AHMEDNAGAR.

(BEFORE ABHIJEET G. DESHMUKH, PRESIDING OFFICER)

Reference (I.D.A.) No. 28/2019.

(CNR–MHLC-160000842019)

1. M/s. Sun Security Services,
Survey No. 67, 1st Floor,
Parmar Nagar No. 3,
Pune – 411013.

2. The General Manager,
Bharat Sanchar Nigam Ltd.,
DTO Compound, Near GPO,
Ahmednagar – 414002.

3. Sub Divl. Engineer,
Bharat Sanchar Nigam Ltd.,
Kopragaon Distt,
Ahmednagar – 414002. … **First Party.**

VERSUS

Sh. Narode Bhaskar Keshvrao,
C/o. Narode Galli, Po. - Kopargaon,
Tal – Sangamner, Distt. - Ahmednagar,
Ahmednagar – 414002. … **Second Party.**

APPEARANCE :- Shri. A.V. Patil, Ld. Adv. for First Party.
Shri. K.Y. Modgekar, Ld. Adv. For Second Party.

A W A R D

(Delivered on 31/07/2024)

1. The Section Officer, Government of India, Ministry of Labour, New Delhi has sent this reference under clause (d) of sub-section (1) and sub-section 2-A of Section 10 of the Industrial Disputes Act, 1947, for adjudication of the dispute between the above parties.

2. Perusal of record and proceedings discloses that this Court has issued notices to both the parties vide Exh. O-2 and Exh. O-4. The first party No. 1 failed to appear before the Court. Hence, matter is proceeded ex-parte against first party No. 1 vide order on Exh. U-1 dated 22.01.2020. The second party and first party Nos. 2 and 3 appeared through their respective Advocates, and filed their respective statement of claim and written statement. The second party has also filed interim relief application Exh. U-2. The first party Nos. 2 and 3 have filed their detailed say at Exh. C-7 to the interim relief application of the second party. Thereafter, the second party has filed notice of documents Exh. U-7 on 12.02.2020. The said application was decided on 01.02.2021. Thereafter, the matter was posted from time to time till 10.07.2024, for argument on interim relief application and compliance of order passed on Exh. U-7.

3. Perused record and proceedings. Perusal of Roznama discloses that the second party has not taken any steps to proceed further with the case since last more than 3 years. This lethargic behavior of the second party clearly shows that the second party lost his interest in proceeding with the present Reference. Hence, on 10.07.2024, the matter is posted for passing Award. Thereafter, also the second party remained continuously absent and failed to take steps.

4. Today, the second party is called out repeatedly, but he failed to appear before the Court and to take steps. Having regard to these facts and circumstances of the case, this Court is of the considered view that the second party failed to appear before this Court even after giving more than sufficient opportunities and he lost his interest in proceeding with the present Reference. Hence, the present matter deserves to be disposed of by answering the

Reference in negative. Hence, the following award is passed.

AWARD

1. The reference is answered in negative.
2. Six copies of this Award be sent to Section Officer, Government of India, Ministry of Labour, New Delhi for publication and further necessary action.
3. No order as to costs.

ABHIJEET G. DESHMUKH, Presiding Officer

नई दिल्ली, 1 अक्तूबर, 2024

का.आ. 1894.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **यूनियन बैंक ऑफ इंडिया** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगि औद्योगिक क विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **जबलपुर** के पंचाट (62/2023) प्रकाशित करती है।

[फा. सं. एल-12012/42/2012- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 1st October, 2024

S.O. 1894.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 62/2023*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen.

[F. No. L-12012/42/2012- IR (B-II)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/62/2023

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Dwarka Prasad Soni,

Ward 7 Cod Road Ranjhi,

Jabalpur, (M.P.) - 482009

Workman

Versus

The Branch Manager,

Union Bank of India,

Jabalpur, Sbc Branch, High Court Campus,

Jabalpur, (M.P.) - 482009

Management

J U D G E M E N T

(Passed on this 11th day of September-2024.)

Vide communication reference number J-7(2)/2023-ALC by the Deputy Chief Labour Commissioner (Central) Jabalpur, Ministry of Labour, New Delhi this reference is sent to the Tribunal under section-10 of Industrial Disputes Act, 1947 (in short the 'Act') The dispute under reference related to :-

"Whether the action of management of Union Bank of India Jabalpur to terminate the service of the workman Shri Dwarka Prasad Soni without conducting departmental enquiry and proving the charges framed against the workman is valid? If not what relief the workman is entitled for?"

After registering the case on the basis of the reference received, Notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

The skeletal facts, which are almost admitted between the parties are that the workman, while working as an employee of the Management Bank, was convicted for charge under Section 138 of the Negotiable Instruments Act, 1881(in sort to be referred as the word 'Act') for issuing of three cheques of one lakh each against the loan taken by the workman from the complainant Santosh Kumar Sahu which were dishonored due to lack of sufficient fund. The first case was Criminal Case No.27538/06 decided on 17-11-2007 in which he was convicted simple imprisonment for three years and fine of Rs.1,45,000/-. The second was Criminal Case No.27359/06 wherein he was convicted for six month simple imprisonment and fine of Rs.2,90,000/- decided on 17-11-2007. This convictions were appealed against and were confirmed by Appellate Court in Criminal Appeal Nos. 557/07 and No.558/08. The Management, in the light of provision of Section 1(b) of Banking Regulations Act 1949 & in terms of provisions contained in Para-3(b) Bi-Partite Settlement dated 10-4-2002(in short the settlement), served the workman, a notice seeking his explanation within 15 days from the date of receipt of notice. The applicant did not submit any explanation and the Disciplinary Authority dismissed the workman from the services of the Bank from the date of his conviction i.e. 24-1-2008. The workman challenged his dismissal on the ground that it was harsh and not proportionate. The workman raised an industrial dispute against his termination. On failure of conciliation, a reference was sent to this Tribunal by the Government of India as per letter dt. 01/03/2013 U/s 10 of The Industrial Disputes Act, 1947 vide notification number L-12012/42/2012-IR (B-II) which was as under –

"Whether the action of management of Union Bank of India in dismissing the services of Shri Dwarka Prasad Soni Ex-peon w.e.f. date of conviction for offence i.e. 24/01/2008 is legal and justified ? What relief the workman is entitled to ?"

The workman also filed a petition under Section 2A(2&3) of Industrial Dispute (Amended) Act 2010. Seeking same relief.

Separate cases were registered as R/57/2013 & RC/10/2013 on the basis of reference and petition In both the cases the facts and evidence. Since fact and disputes in both the were common, hence both the cases were amalgamated and after recording evidence, were decided by common judgment on February10,2020.Following award was passed-

A. Penalty of dismissal of Shri Dwarka Prasad Soni, Ex-Peon from service w.e.f 24-1-2008 in terms of Para-3(b) of the Bi-Partite Settlement No.6 of 2002 dated 10-4-2002 is held not justified in law.

B. The Authority is obligated to pass a fresh order considering all the facts aggravating and mitigating taking into the nature of transactions, which lead into conviction, previous service record of the workman and his length of service recording a finding as to what punishment whether dismissal or punishment will be justified in the case in hand.

Thereafter, the management Bank again passed following order in the light of the directions in the award.

"श्री डी पी सोनी यूनियन बैंक ऑफ इंडिया की हाई कोर्ट शाखा, जबलपुर में दफ्तरी के पद पर पदस्थ थे और उन्हे तत्कालीन अनुशासनिक प्राधिकारी द्वारा आदेश क्रमांक FGMO/HRMD/473 दिनांक 16.10.2008 द्वारा द्विपक्षीय समझौते दिनांत 10.04.2002 के पैरा 3(बी) से प्रावधान के तहत "Dismissal" का दण्ड दिया गया था और दिनांक 24 01.2008 से, बैंक की सेवा से बर्खास्त किया गया था।

तत्पक्षांत श्री सोनी ने औद्योगिक विवाद उठा कर इस दण्ड को चुनौती दी थी और न्यायिक निर्णय के विफत होने पर मामता CGIT में समझौते के लिए गया थाICGIT, जबलपुर ने अपने अवार्ड दिनांक 13:17.2020 द्वारा बैंक को आदेश दिया है कि बैंक मामले के सभी तथ्यों लेन-देन की प्रकृति जिसके द्वारा श्री सोनी को दोषी करार किया गयः था, बैंक में श्री सोनी का पिछला रिकॉर्ड व सेवा अवधि को ध्यान में रखते हुये दोबारा अपने निष्कर्ष को रिकॉर्ड करें और यह निर्णय लें dh उक्त मामले में श्री सोनी को "Dismissal" या कोई और दण्ड देना चाहिए।

अतः उपरोक्त को ध्यान में रखते हुये अधोहस्ताक्षरी द्वारा पह निर्णय लिया गया कि श्री सोनी को इस संबंध में अपना पक्ष रखने हेतु एक मौका दिया जाए जिससे उन्हें उचित न्याय मिल सके, तदानुसार श्री डी पी सोनी को मामले पर पुनःविचार करने हेतु क्षेत्र महाप्रबन्धक कार्यालय भोपाल में दिनांक 06.10.2020 को व्यक्तिगत सुनवाई के लिए बुलाया गया।

व्यक्तिगत सुनवाई के दौरान श्री सोनी ने लिखित में एक अभिवेदन प्रस्तुत किया परंतु, उस अभिवेदन में ऐसा कोई भी तथ्य एवं/अधवा दस्तावेज प्रस्तुत नहीं किया गया है जिसे पूर्व में कोर्ट या तत्कालीन अनुशासनिक प्राधिकारी के समक्ष प्रस्तुत नहीं

किया गया हो। अधोहस्ताक्षरी द्वारा सभी तथ्यों, लेन-देन की प्रकृति जिसके द्वारा श्री सोनी को दोषी करार किया गया था, बैंक में श्री सोनी का पिछला रिकॉर्ड व सेवा अवधि का अवलोकन किया है परंतु श्री सोनी के बचाव में कोई भी नया तथ्य सामने नहीं आया है। अतः किसी भी नए तथ्य के अभाव में अधोहस्ताक्षरी को तत्कालीन अनुशासनिक प्राधिकारी के निर्णय को बदलने का कोई भी कारण नहीं मिला है। अतः तत्कालीन अनुशासनिक प्राधिकारी के आदेश को कापम रखते हुए निम्न आदेश पारित किया जा रहा है।

आदेश

द्विपक्षीय सम्झौता दिनांक 10.04.2002 के पैरा 3 (वी) के प्रावधान के तहत दिनांक 24.01.2008 से बैंक की सेवा से बर्खास्तगी"

The workman again raised an industrial dispute against his second termination order ,with reference to which, the present reference has been sent by the Dy. Chief Labour Commissioner.

The case of the workman is mainly that his service record has been unblemished, the Disciplinary Authority has passed the second termination order arbitrarily without considering the past unblemished service record of the workman and the fact that the concerned convictions were with respect an act relating to private transactions.

Management has defended its action in the light of Para-3(b) of the Bi-Partite Settlement No.6 of 2002 and Section 10(1)(b) of the Banking Regulation Act, 1949, with the case that the the second order has been passed taking in to consideration all the facts as well the fact that Bank cannot afford to have a convicted person as its staff because it will adversely affect the reputation of the Bank resulting into loss of business.

Both the sides have produced their oral and documentary evidence to be referred to as and when required.

6. I have heard argument of learned Counsel for Workman Mr. Praveen Yadav and for Management Bank Advocate Mr. Shailendra Pandey. Parties have filed written arguments as well. I have gone through the record and written arguments filed by the Management.

7. On perusal of the record in the light of the rival arguments makes out following issue to be decided:-

Whether second order of Management in terminating the services of applicant/workman on the ground of his conviction under Section 138 of the 'Act' in two cases is justified in law or not?

8. The main arguments for learned Counsel for applicant/workman is that the alleged transactions resulted into conviction of the workman under Section 138 of the 'Act' is **firstly,** between two individuals in individual capacity, **secondly,** it has no connection to the official duties of the workman and thirdly the Bank has not been put to any loss due to these transactions**, furthermore,** the charge under Section 138 of the 'Act' is not an act of moral turpitude. The learned Counsel has further referred to Para-3(b) of the Bi-Partite Settlement No.6 of 2002 and has submitted that the impugned dismissal order does not show that the Disciplinary/Controlling Authority exercised its discretion and recorded any findings as to why the workman deserves the maximum punishment of dismissal, hence this order is bad in law on this score also.

Learned Counsel has referred to cases in this respect-

a) **Ibrahim Kannu Vs. State of Kerala 2005 SCC OnLine Ker 494 :**

The referred paragraphs are as follows :-_

"7. Division Bench of this court in *Saseendran's case* (supra) has only stated that the act of issuing a cheque without sufficient funds is not generally regarded as morally wrong or corrupt and that the offence under S. 133 will not normally involve moral turpitude. Holding so, the court held as follows:

"We approve the said principle and hold that the question whether an offence would involve moral turpitude has to be decided on the facts of each case. All offences do not necessarily involve moral turpitude. S. 138 of the Act is no exception to the said principle. On the facts of the case, we find no scope for holding that the offence found against the appellant has any reflection of moral turpitude."

8. We also notice that while affirming the judgment in OP. 10336 of 2002 the Division Bench in K.S.R.T.C. v. Abdul Latheef, 2005 (3) KLT 955 held as follows:

"Even if there was conviction, under R. 18 of the Rules, it was incumbent on the appointing authority to consider the circumstances as to the misconduct which lead to the conviction and to pass appropriate orders. Every cases of conviction shall not result in dismissal.

When the requirement in S. 138 of the Negotiable Instruments Act is satisfied, one will be deemed to have committed offence. It is only a deeming provision. Offence under S. 138 of the Act being an offence in the commercial practice cannot be taken as one involving moral turpitude, in the absence of any other cogent material to discern moral turpitude. No such special-circumstance is pointed out by the appellant. In such circumstances also the direction to reinstate the first respondent cannot be said to be unjustified."

9. We therefore notice that while affirming the judgment in OP. 10336 of 2002 the Division Bench has also held that offence under S. 138 of the Act being an offence in the commercial practice cannot be taken as one involving moral turpitude in the absence of any other cogent material to discern moral turpitude. We therefore find that the Division Bench has not fully supported the view expressed by the learned single Judge in OP. 10336 of 2002.

b) K. Thilagavathi Vs Managing Director and others WP no. 2195/2020 decided on 28/10/2020 by Hon'ble Madras High Court.

The referred paragraphs are as follows :-

"11. Learned Counsel appearing for the petitioner would submit that for a simple loan transaction, which unfortunately ended in conviction, the petitioner has lost her job and all her service retirement benefits which were otherwise due. She would state that after imposition of the impugned penalty, the petitioner had also reached the age of superannuation on 31.11.2017. On the contention of proportionality, the learned Counsel would rely on a decision of Kerala High Court dated 20.10.2010 in W.P.(C).No.24066/2007. According to the learned Counsel, the Kerala High Court has held that conviction involving moral turpitude alone would invite order of dismissal and not otherwise. She would particularly rely on the following.

"From the same it is evident that a dismissal for conviction in a criminal case can be only if that conviction is for an offence involving moral turpitude. Therefore without a finding that the conviction of the petitioner was for an W.P.(C)N.24066 of 2007 offence involving moral turpitude the petitioner cannot be dismissed from service. 7/16 http://www.judis.nic.in W.P.No.2195 of 2020 Ext.P4 is the order of the Bank dismissing the petitioner. It does not state as to whether the action of the petitioner leading to his conviction under Section 138 of the Negotiable Instruments Act involved moral turpitude. It merely say that, since he has been convicted for a criminal offence he has been dismissed from service. The reasoning in Exts.P7 and P9 also do not reveal that there is a finding to the effect that the petitioner was convicted for an offence involving moral turpitude.

6. Of course, the learned Counsel for the Bank would refer me to paragraph 24 of Ext.P9 order in an appeal wherein several earlier misconducts of the petitioner has been quoted which according to the Counsel would go to support the contention of the Bank that his conviction is one involving moral turpitude. I am not satisfied that the past conduct of the petitioner would spell out moral turpitude in a subsequent conviction under Section 138 of the Negotiable Instruments Act.

7. In view of the fact that the service rules permit dismissal on conviction for a criminal offence only if that offence for which he was convicted involves moral turpitude. The decisions in Saseendran Nair's case and Ibrahim Kannu's case (supra) would show that ordinarily an offence under Section 138 of the Negotiable Instruments Act would not involve moral turpitude in the absence of any other cogent materials to discern moral 8/16 http://www.judis.nic.in W.P.No.2195 of 2020 turpitude. Therefore, the normal rule is that, the offence under Section 138 of the Negotiable Instruments Act does not involve moral turpitude. If a person alleges that an offence under Section 138 involves moral turpitude, it is for him to prove with cogent materials that the offence involves moral turpitude. Therefore in this case it is for the Bank to prove that the petitioner's conviction under Section 138 of the Negotiable Instruments Act involves moral turpitude. Apart from the judgment of the criminal court, the Bank has no other material in support of their contention that the conviction of the petitioner is for an offence involving moral W.P.(c).No.24066 of 2007 turpitude. The fact that the petitioner took a defence in the criminal case which was rejected does not ipso facto leads to an inference of moral turpitude insofar as he is not being tried for that defence but being tried for an act constituting an offence under Section 138 by issuing a cheque without sufficient funds in his account and not paying the amount covered by cheque to the creditor despite receipt of notice as provided under the Act. Therefore, the respondents have not been able to show any circumstances which would enable me to draw the conclusion that, the petitioner was convicted for an offence involving moral turpitude. Therefore, the impugned orders are quashed."

15. Although the petitioner was convicted for the offence under section 138 of the Negotiable Instruments Act and sentenced to undergo six months simple imprisonment with fine, yet it is imperative upon the authority to examine whether the conviction of the petitioner was due to 10/16 http://www.judis.nic.in W.P.No.2195 of 2020 grave criminal conduct on the part of the petitioner involving moral turpitude, or for a conduct involving commission of an offence other than the penal laws, but attracting the mischief of criminal proceedings and its consequence. The facts in this case would disclose that it is a simple case of conviction for cheque dishonour arising from a private loan transaction between the petitioner and the third party. Therefore, imposition of stringent and harsh penalty of removal from service, in the opinion of this Court, is not warranted at all.

17. If the punishment of dismissal or removal from service is the automatic penalty to be imposed on every convicted employee, it could only result in painting every convicted employee with the same brush, whether the employee involved in serious and heinous crime or a simple offence relating to Section 138 (N.I.Act), The discretion vests in the authority would be meaningless, if the authority is to discharge such discretion perfunctorily with a rigid mind set. According to Regulation 37 of the Tamil Nadu State Housing Board Service Regulations, 1969, the following major penalties are envisaged. 37. Procedure for awarding penalties:- .... Major penalties:- (i)... 1)reduction to a low post or to a lower stage in the time scale of pay or 2) compulsory retirement; or 3) removal from service; or 4)dismissal from service.

18. In the counter affidavit, the claim of the petitioner that she had rendered blemishless service has not been disputed. In the counter, nothing is stated on record pointing out any shortcomings on the part of the petitioner in discharge of her duties. While so, it is also the more reason that the authority ought to have taken the conduct which led to the 12/16 http://www.judis.nic.in W.P.No.2195 of 2020 conviction of the petitioner and ought to have spelt out the basis for the decision of imposing the harsh penalty of removal from service. The impugned order did not disclose any such application of mind on the part of the authority.

19. No doubt, the Board had to take action in the face of the conviction recorded against the petitioner by the criminal court, but at the same time, the Board has a momentous discretion to take a decision as to the nature of penalty to be imposed with reference to the circumstances and facts of each case. This is one such case that the Board has approached the matter, without displaying any kind of empathy and benevolent consideration, while deciding to impose the harsh penalty of removal from service. Further subsequently, the order of conviction was also set aside on 20.04.2018 by proceedings of the High Court Lok Adalat on the basis of compromise entered into between the petitioner and the complainant. That being the case, the petitioner is entitled to be treated leniently atleast after 20.04.2018."

c) Mangi Lal Vs State of Rajasthan (2023 Rj-Jd 20694) on 11 July 2023 Rajasthan High Court

The referred paragraphs are as follows :-

"9. True it is, that the petitioner was convicted under Section 138 of the N.I. Act by judgment and order dated 11.01.2016 but this Court is of the firm view that a conviction under Section 138 of the N.I. Act neither constitutes a gross misconduct nor does it [2023:RJ-JD:20694] (4 of 10) [CW-13764/2018] amount to moral turpitude so as to warrant disciplinary proceedings. In the present factual backdrop, neither it has any nexus with the petitioner's employment nor the petitioner's negligence or financial constraints can be treated to be unbecoming of a Government servant. By no stretch of imagination, the petitioner can be held unsuitable for public employment.

11. Though an act of Government servant in failing to arrange funds sufficient to honour the cheque issued by him can never be endorsed by this Court, but then, we cannot lose sight of the fact that offence under Section 138 of the N.I. Act is essentially commercial in nature. Cheque issued by a person can be dishonoured on account of variety of factors/reasons, including insufficiency of funds. It is purely a private dispute - it is a civil wrong and by no stretch of imagination, the same can be treated to be a wrong against the society at large.

12. Above view of this Court derives support from the judgment of Hon'ble the Supreme Court in the case of P. Mohanraj & Ors. Vs. Shah Brothers reported in (2021) 6 SCC 258, wherein though in a different context, Hon'ble the Apex Court expressed its opinion on the nature of proceedings under chapter XVII (S.138 to 142) of the N.I. Act, in following words:-

[2023:RJ-JD:20694] (5 of 10) [CW-13764/2018] "45 - Section 138 contains within it the ingredients of the offence made out. The deeming provision is important in that the legislature is cognizant of the fact that what is otherwise a civil liability is now also deemed to be an offence, since this liability is made punishable by law. It is important to note that the transaction spoken of is a commercial transaction between two parties which involves payment of money for a debt or liability. The explanation to Section 138 makes it clear that such debt or other liability means a legally enforceable debt or other liability. Thus, a debt or other liability barred by the law of limitation would be outside the scope of Section 138.

This, coupled with fine that may extend to twice the amount of the cheque that is payable as compensation to the aggrieved party to cover both the amount of the cheque and the interest and costs thereupon, would show that it is really a hybrid provision to enforce payment under a bounced cheque if it is otherwise enforceable in civil law. Further, though the ingredients of the offence are contained in the first part of Section 138 when the cheque is returned by the Bank unpaid for the reasons given in the Section, the proviso gives an opportunity to the drawer of the cheque, stating that the drawer must fail to make payment of the amount within 15 days of the receipt of a notice, again making it clear that the real object of the provision is not to penalise the wrongdoer for an offence that is already made out, but to compensate the victim.

[2023:RJ-JD:20694] (6 of 10) [CW-13764/2018] 53 - It is clear that a Section 138 proceeding can be said to be a "civil sheep" in a "criminal wolf's" clothing, as it is the interest of the victim that is sought to be protected, the larger

interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases, as has been seen by us in the analysis made hereinabove of Chapter XVII of the Negotiable Instruments Act."

13. In another judgment of Hon'ble the Supreme Court in the case of Kaushalya Devi Massand Vs. Roop Kishore Khore reported in (2011) 4 SCC 593, while expressing its opinion on the nature of offence under Section 138 of the N.I. Act, the Court succinctly stated:

"Para No.11 Having considered the submissions made on behalf of the parties, we are of the view that the gravity of a complaint under the Negotiable Instruments Act cannot be equated with an offence under the provisions of the Indian Penal Code or other criminal offences. An offence under Section 138 of the Negotiable Instruments Act, 1881, is almost in the nature of a civil wrong which has been given criminal overtones."

14. In the opinion of this Court invoking provisions of Article 311 of the Constitution of India or Rule 19 of the Rules of 1958 in the event of conviction under Section 138 of N.I. Act is non application of mind, if not arbitrary exercise of powers. Dent on person's reputation or the social stigma attached to a person's life by being dismissed from services is much more than what could have been by conviction or imprisonment consequent to dishonour of cheque. [2023:RJ-JD:20694] (7 of 10) [CW-13764/2018] Such dent is, as a matter of fact, a jolt to the lives of the employee and his family.

17. It is important at this stage to set out Article 311(2) of the Constitution of India and Rule 19 of the Rules of 1958 which read as follow:

Article 311(2) of the Constitution of India:- No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry."

[2023:RJ-JD:20694] (8 of 10) [CW-13764/2018] Rule 19 of the Rules of 1958:- Special procedure in certain cases.- Notwithstanding anything contained in rules 16, 17 and 18,

(i) where a penalty is imposed on a Government Servant on the ground of conduct which has led to him conviction on a criminal charge; or

(ii) where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules; or

(iii) Where the Governor is satisfied that in the interest of the security of the State, it is not expedient to follow such procedure, the disciplinary Authority may consider the circumstances of the case and pass such orders as it deems fit.

Provided that the Commission shall be consulted before passing such orders in any case in which such consultation is necessary."

18. It is to be noted that Article 311(2)(a) so also Rule 19(i) which is couched in similar words speak of "conduct which has led to his conviction on criminal charge." As has been opined above a conviction under Section 138 of the N.I. Act is not in stricto-sensu a conviction on criminal charge, given that by virtue of provisions of Section 143 of the N.I. Act, an offence under N.I. Act is tried summarily by virtue of what has been provided in Sections 262 to 265 of the Code of Criminal Procedure, 1973, under which procedure framing of charge is not mandatory.

19. Then again, the expression used in Article 311(2)(a) and Rule 19(i) is "conduct which has led to." The conduct of the employee in the present case cannot be equated to conduct which otherwise leads to conviction on criminal charge as in the case of offences under Indian Penal Code or Prevention of Corruption Act. Hon'ble the Supreme Court in the case of Shanker Dass Vs. Union of India & Anr., reported in (1985) 2 SCC 358, expressed its opinion upon power of employers under Article 311 of the Constitution to dismiss and held thus:

[2023:RJ-JD:20694] (9 of 10) [CW-13764/2018] "Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But, that power, like every other power has to be exercised fairly,

justly and reasonably. The Constitution does not contemplate that a Government Servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may, perhaps not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that. Article inapplicable when a penalty is to be imposed on a Government Servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. In the instant case, the Government chose to dismiss the appellant in a huff without applying its mind to the penalty which could appropriately be imposed upon him in so far as his service career was concerned. Considering the facts of the case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical."

20. Rule 19 of the Rules of 1958, which is the exception to the general rule and the prescribed procedure to remove or dismiss a government servant has been enacted to clothe the Disciplinary Authority with the power to remove or dismiss an employee in the situations mentioned in second proviso to clause (2) of Article 311 of the Constitution of India, in which an inquiry is not necessary. Clause (i) of Rule 19 of the Rules of 1958 which is the applicable provision in the case in hands lays much emphasis on the conduct and provides that such conduct should lead to conviction on a criminal charge. In the opinion of this Court, the dishonour of cheque does not reflect upon moral conduct of an employee.

22. To conclude - bearing in mind, the nature of offence involved, which is predominantly civil and the offence not being the one against the society or public at large, coupled with the fact that the complainant himself has compromised the matter with the petitioner, this Court is of the considered opinion that petitioner's dismissal in the present factual backdrop is liable to be quashed and set aside."

d) **Judgment of Hon'ble High Court of Madhya Pradesh at Jabalpur in Writ Petition No.3254/2016 Manoharlal Pandey Vs. Water Resource Department.**

"11. Even if it is presumed that the petitioner has taken a loan from one Geeta Bai and he has not repaid the same and cheque has been dishonored, the gravity of the offence has to be looked into while passing the order under Section 19 as the case was initiated on the basis of the complaint.

12. In the considered opinion of this Court, the impugned order passed by the State Government deserves to be quashed and is hereby quashed as the petitioner was not involved in a criminal case relating to moral turpitude.

13. The respondent/State shall be free to pass an appropriate order afresh.

14. The respondent/State shall not pass the order of dismissal of the petitioner from services, terminating the petitioner from services or compulsory retiring the petitioner from services.

15. The respondent/State is directed to reinstate the petitioner in service forthwith"

The Management has submitted that Para- 3(b) of the Bi-Partite Settlement No.6 of 2002 empowers the Management to impose the punishment of dismissal to an employee who has been convicted for a criminal charge and further submission was that the Bank cannot afford to have a convicted person as its employee on its role as it will affect the general reputation of the Bank resulting into loss of business.

9. Before entering into any discussion Para-3(b) of the Bi-Partite Settlement No.6 of 2002 dated 10-4-2002 reads as follows:-

"If he be convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 6."

10. A bear reading of this provision shows that in case of conviction, apart from dismissal from service any lesser form of sentence as mentioned in Clause-6 of the Bi-Partite Settlement may also be awarded. Para-6 of the Bi-Partite Settlement reads as follows:-

An employee found guilty of gross misconduct may:

(a) be dismissed without notice or

(b) be removed from service with superannuation benefits i.e. pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment or

c) be compulsorily retired with superannuation benefits i.e. pension and/or Provident Fund and Gratuity would be due otherwise under the rules or Regulations prevailing at the relevant time and without disqualification from future employment or

(d) be discharged from service with superannuation benefits i.e. pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment or

(e) be brought down to lower stage in the scale of pay up to a maximum of two stages or

(f) have his increments/stopped with or without cumulative effect or

(g) have his special pay withdrawn or

(h) be warned or censured or have an adverse remark entered against him;

(i) Or be fined

11. Learned Counsel for Management/Bank has referred to **Sushil Kumar Singhal Vs. Regional Manager, Punjab National Bank(2010)8 SCC 573** where in a Bank employee who was entrusted Rs.5000/- from Bank to deposit it with the post office as telephone bill which he misappropriated and was convicted with Charge under Section 409 of IPC. The Bank dismissed the employee holding the charge an act of-moral turpitude which was upheld by Hon'ble Apex Court. In the case referred to above by learned Counsel for workman it has been laid down that the offence under Section 138 of the 'Act' that when this transaction was between two individuals in their private capacity not connected to their official working, is not an act of moral turpitude.

12. According to the Bi-Partite Settlement Para-5(s) the conviction of an employee by a Criminal Court of law for an offence involving moral turpitude is a gross misconduct for which dismissal may be done as punishment in the light of Para-6(a) of the Bi-Partite Settlement. Para-5(s) and Para-6(a) of the Bi-Partite Settlement reads as follows :-

Para 5(s):- Conviction by a criminal Court of law for an offence involving moral turpitude.

Para-6(a):- Be dismissed without notice

13. Since it is not the case of the Bank and dismissal order also does not show that the dismissal order was passed as a punishment using powers under Section 5(b), Para5(s) and Para 6(a) hence it will a futile exercise to probe into the fact whether the charge leading into conviction was an act of moral turpitude or not. In the case in hand the workmen have been dismissed from service using powers under of Para-3(b) of the Bi-Partite Settlement No.6 of 2002.

14. It is undisputed that the alleged transactions regarding issuance of cheque which was dishonored leading into conviction in two cases under Section 138 of the Negotiable Instruments Act were between two private individuals in their individual capacity. This is also established that Bank was not put to any financial loss. The impugned second order of dismissal, reproduced as above, does not show that the Authority, which passed the said order, considered the point as to why a lesser punishment could not be fit in this case. The provision also provides dismissal or lesser form of punishment in a situation when power under Para-3(b) of the Bi- Partite Settlement No.6 of 2002 is used by the Authority. The second dismissal order mentions that the nature of the transaction resulting into conviction of the workman as well as his previous record and facts relating to the case and also the fact that there was no new fact emerged after the first termination order."

In his statement of claim, the workman has alleged that he had worked with utmost honesty, sincerity and satisfaction to his superiors. Also, that his whole service record is clean and unblemished. He was not punished earlier. In its written statement of defence, management does not controvert this allegation. The workman has corroborated this allegation in his affidavit. There is no material from the side of management to show that the workman was earlier punished for any other misconduct nor does the second termination order state this fact. This leads to an inference that the service record of the workman has been unblemished. Naturally, the service record of the workman could not be an aggravating factor for the punishment rather it was no doubt that it was a mitigating factor. Another factor that the workman had put in almost 30 years in service and was on the verge of retirement. Had these factors been judiciously considered by the Disciplinary Authority and in true spirit, these facts, coupled with the fact that the charge U/s 138 of N.I. Act is a private offence, mainly of commercial nature, in passing the second termination order, the order would have certainly been different. The settled proposition of law is that when the Authority is vested with discretion it has to be exercised judiciously otherwise it shall lead to arbitrariness which has happened in the case in hand.

15. In the light of above discussion the second order of the Disciplinary Authority in the case in hand as punishment cannot be said to be justified in law and it is liable to be set aside. Keeping in view the otherwise clean service record and the service tenure as well as the nature of the conviction, punishment of compulsory retirement from service with superannuation benefits that is pension and Provident Fund as well Gratuity as provided in Para 6(c) of the Bi-partite settlement will meet the interest of Justice.

16. On the basis of the above discussion, the reference is answered as follows :-

AWARD

Holding the second termination order dated 11.01.2021 unjust and against Law, using the powers u/s 11 A of the Industrial Disputes Act 1947, the punishment of termination Dated 11/10/2021 awarded to workman Dwarka Prasad Soni is converted into punishment of compulsory retirement from service with superannuation benefits ie; pension and Provident Fund as well Gratuity as provided in Para 6(c) of the Bi-partite settlement. The workman is also held entitled to Rs. 25,000/- as litigation cost. The management is directed to make

payment in the light of the Award to the workman within 30 days from the publication of the Award failing which interest @ 8 % per annum.

17. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE : 11/09/2024

नई दिल्ली, 20 जून, 2024

का.आ. 1895.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **फ़ूड कारपोरेशन ऑफ़ इंडिया लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण -सह - श्रम न्यायालय, कोलकाता** के पंचाट **(संदर्भ संख्या 04/2011)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/06/2024** को प्राप्त हुआ था।

[फा. सं. एल-22011/15/2011- आई आर (सीएम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 20 June, 2024

S.O. 1895.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 04/2011)** of **the Central Government Industrial Tribunal-cum-Labour Court, KolKata** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India Ltd.** and **their workmen** received by the Central Government on **18/06/2024**.

[F. No. L-22011/15/2011- IR (CM-II)]

MANIKANDAN. N, Dy. Director

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNA AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. No. 4 of 2011

Parties : Employees in relation to the management of

Food Corporation of India, Regional Officer, West Bengal

AND

Their Workmen/Union

Appearance :

On behalf of the Management: Mr. Uttam Kumar Mondal,

Advocate.

On behalf of the Workmen/ Union : Absent

Dated : 23rd November, 2023

Management of FCI is represented by Ld. Counsel Mr. Uttam Kumar Mondal. None appears from the side of the union when the matter is called.

The record shows the union is very irregular in conducting the present case and since 01-08-2023 it has stopped taking any step and pursuing with the dispute espoused by it. Taking into consideration the conduct of the union it can be inferred the union is no more interested to pursue with the dispute espoused by it.

The Central Govt., Ministry of Labour vide order No. L-22011/15/2010(IR) CM – II dated 05-08-2011 referred the following dispute to this Tribunal for adjudication:-

"Whether the action of the management of Food Corporation of India in respect of its West Bengal Region, Kolkata in dismantling the gangs formed vide order dated 20-09-1997 and thereby demoting 11 workmen (as per list enclosed) from the post of Sardar and Mondal to the Handling workers w.e.f. 01-02-1998, is legal and justified? To what relief the concerned workmen are entitled to?"

In the record apart from the written statements of the union and the management there is neither oral nor documentary evidence being produced by the union to substantiate its claim or decide the issue under reference.

In view of the above no dispute award is passed. Accordingly, Reference Case No. 4 of 2011 is disposed of.

K. D. BHUTIA, Presiding Officer

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